TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 337.

JACKSON W. GILES, PLAINTIFF IN ERROR,

vs.

CHARLES B. TEASLEY, WILLIAM A. GUNTER, Jr., AND E. JEFF HARRIS, AS THE BOARD OF REGISTRARS OF MONTGOMERY COUNTY, ALABAMA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

FILED JUNE 29, 1903.

(18,988.)

27482

(18,988.)

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1 3 Div. 368.

(Supreme Court of Alabama. Filed Dec. 9, 1902. Rob't F. Ligon, Jr., Clerk.)

JACKSON W. GILES
v.
CHAS. B. TEASLEY ET ALS., Board of Registrars, &c.

Appeal from Montgomery city court.

Dec. 15, 1902.—Submitted on briefs.
Feb. 28, 1903.—Affirmed. Tyson, J.

2 THE STATE OF ALABAMA,
Montgomery County.

Be it remembered that at a term of the city court of Montgomery, begun and holden for said county, at the court house, in the city of Montgomery, State and county aforesaid, on the second Monday in October, in the year of our Lord, one thousand nine hundred and two, it being the thirteenth day of said month—present, the Honorable A. D. Sayre, judge presiding—the following proceedings were had and the following judgments were rendered, to-wit:

3 THE STATE OF ALABAMA,
Montgomery County.

To any sheriff of the State of Alabama, Greeting:

You are hereby commanded to summon Charles B. Teasley, E. J. Harris and Wm. A. Gunter, Jr., board of registrars of Montgomery county, to appear before the city court of Montgomery, in and for said county, at the place of holding the same, within thirty days from the service of this summons and complaint, then and there to demur or plead to the complaint of Jackson W. Giles.

And you are hereby commanded to execute this process instanter and make return as required by law.

Witness my hand this 24th day of June, A. D. 1902.

H. H. MATTHEWS, *Clerk.*

THE STATE OF ALABAMA,
Montgomery County.

In the City Court of Montgomery, Oct. Term, 1902.

JACKSON W. GILES, Plaintiff,
vs.
CHAS. B. TEASLEY, E. J. HARRIS, and WM. A. GUNTER, JR., Board of Registrars, Montgomery County, Defendants.

Complaint.

The plaintiff in the above-entitled cause claims of the said defendants the sum of five thousand dollars, damages, for wilfully and wrongfully refusing to register him, and issue to him a certificate of qualification as an elector in the State of Alabama, under the constitution and laws of said State for no other reason
4 than his race and color, the plaintiff being a person of black complexion, and of African descent known as a negro, and qualified under the law; and the plaintiff claims that the said defendants thereby wilfully and wrongfully deprived him of his right to vote, guaranteed under the first section of the 15th amendment to the Constitution of the United States, as hereinafter set forth:—

The plaintiff says that having been born in the State of Alabama, and having resided in Montgomery county for 30 yrs. and in precinct No. 4 for more than 2 years next before he applied for registration, and having theretofore, exercised all the rights and enjoyed all the privileges of a citizen of the United States and an elector of the State of Alabama, did on the 13th day of March, 1902, while the said board was in session at the court house in the city of Montgomery, and open for the registration of the electors of said county, make application in due form to said defendants, sitting as the board of registrars of said Montgomery county, to be registered as an elector of the State of Alabama, and complied with all the reasonable and legal requirements of said board, but that they arbitrarily and without justification or excuse, wrongfully and wilfully refused to register the plaintiff and wrongfully and wilfully refused to issue to him a certificate of qualification as an elector of the State of Alabama, for no other reason than his race and color; and at the same time refused large numbers of negroes similarly situated and qualified as the plaintiff, while all white men were registered and given certificates without a single denial, or even a question raised as to their right or qualification, and that said defendants acting in their said official capacity, required the plaintiff and all negroes to furnish the testimony of two white men as to their qualification and character, and refused to accept the testimony of any colored person, while all white men were registered without any proof except the oath of the applicant;

And the plaintiff further claims and shows, that the said de-

fendants well knew that sections 180, 181, 183, 184, 185, 186,
5 187, and 188 of article 8 of the new constitution of Alabama, which went into effect November 28th, 1901, under and by virtue of which they were appointed and were acting at the time, were intended, designed and enacted by the State of Alabama through the delegates to the constitutional convention which enacted said constitution, to deny and abridge the right of the plaintiff and all members of his race in the State of Alabama, to vote in said State, solely on account of their race color and previous condition of servitude, without disfranchising a single white man; and that said defendants well knew that said constitutional convention was composed entirely of white men, although the population of the State of Alabama is composed of 1,001,152 white persons, and 827,545 colored, and that in the following counties the negroes are in the majority to-wit:

Autoga	county, whites	6,722	colored	11,173.
Barbour	" "	12,781	"	22,371.
Bullock	" "	5,846	"	26,098.
Butler	" "	12,494	"	13,247.
Chambers	" "	15,139	"	17,415.
Choctaw	" "	7,854	"	11,278.
Clarke	" "	11,952	"	15,838.
Dallas	" "	9,285	"	45,372.
Greene	" "	3,307	"	20,875.
Hale	" "	5,664	"	25,347.
Lowndes	" "	4,764	"	30,889.
Macon	" "	4,252	"	18,874.
Marengo	" "	8,841	"	29,474.
Monroe	" "	10,529	"	13,137.
Montgomery	" "	19,825	"	52,222.
Perry	" "	6,821	"	24,962.
Pickens	" "	10,481	"	13,921.
Russell	" "	5,930	"	21,153.
Sumter	" "	5,672	"	27,038.
6 Talladega	county, whites	17,547	colored	18,226.
Wilcox	" "	6,979	"	28,652.

And the said plaintiff claims and shows, that the defendants well knew that section 180 of article 8 of said constitution, adopted for the purpose and with the design hereinbefore stated, is repugnant to the 14th and 15th amendments to the Constitution of the United States, in that it divides the inhabitants of said State into classes, with unequal requirements and qualifications, and because subdivisions 1 and 2 of said section do not contain a statement of qualifications which are applicable to and attainable by all alike regardless of race, color and previous condition, but discriminate against the negroes of Alabama on account of their race, color and previous condition; also, because subdivision 3 of said section is unreasonable and void because too loose and general, in not defining what kind of good character a citizen must have, and what duties

and obligations a citizen must understand under a republican form of government; and further because said subdivision 3 leaves too wide and general a discretion to the registrars, and is equivalent to investing them with arbitrary power.

The plaintiff further claims and shows that the defendants well knew that section 181 of article 8 of said constitution, enacted with the design aforesaid, is repugnant to the 14th and 15th amendments to the Constitution of the United States in this: that while said section pretends to describe the qualifications of persons who shall apply for registration after January 1st, 1903, it was in truth and in fact intended and enacted especially to apply to the plaintiff and all the negroes of Alabama, and not to operate against or affect any white person in the State of Alabama, and is part of the scheme to disfranchise the negroes of Alabama on account of their race and color and previous condition, and by refusing to register the plaintiff and the members of his race, which the defendants have done and are now doing, for no other reason than their race and color, while all white men are registered by the defendants, they
7 thus force all the negroes of Montgomery county to wait until 1903 for registration when said section comes into operation.

Also, the plaintiff claims and shows, that the defendants well knew that section 186 of article 8 of the present constitution of Alabama, enacted with the design aforesaid, is repugnant to the first sections of the 14th and 15th amendments to the Constitution of the United States in this: that said board is composed exclusively of partisan white men, and the pretended right of appeal from their decision to the circuit court and thence to the supreme court in case of refusal, was given to more effectually hinder and deny the plaintiff's right to vote, and the right of his race, on account of their race and color, and not with a view of accomplishing their registration; because all negroes are excluded from serving on any of the juries in the trial courts of Alabama on account of their race and color, and although otherwise qualified for such service, and have been so excluded for a great many years; and the plaintiff would encounter the same prejudice and obtain the same result as upon his application to the registrars.

Likewise, the plaintiff claims that the said defendant well knew that sections 183, 184, 185, 187 and 188 were aimed especially at the plaintiff and the members of his race, and are repugnant to the first sections of the 14th and 15th amendments to the Constitution of the United States, and that all of them were an artful attempt and scheme to evade the 14th and 15th amendments to the Constitution of the United States.

And the plaintiff claims and shows that the said defendants well knowing the intent and objects of said sections, and that the same were null and void, were appointed by the State of Alabama to administer and carry out the same, and did then and there undertake to carry out and administer said sections, and while engaged in the administration of the same, did wilfully and wrongfully deny and

refuse to register the plaintiff and large numbers of his race,
8 for no other reason than their race and color, and thus deprived the plaintiff of his right to vote as an elector in the State of Alabama, contrary to the provisions of the first section of the 15th amendment to the Constitution of the United States, which right is very valuable and sacred to him, to his great damage aforesaid, for which he sues and prays the judgment of the court.

JACKSON W. GILES,
Appearing for Himself and by
WILFORD H. SMITH,
A Member of the Bar of the State of Mississippi,
Appearing in this Case by Special Permission of the Court.

Filed in office this 24th day of June, 1902.
H. H. MATTHEWS, *Clerk.*

Received in office Jun- 24 1902
W. R. WALLER, *Sheriff.*

Executed by serving a copy of the within summons and complaint on C. B. Teasley, E. J. Harris & Wm. A. Gunter, Jr.
W. R. WALLER, *Sheriff,*
P'r S. S. BELSER, *Dep'ty.*

June 26, 1902.

9 In the City Court of Montgomery.

JACKSON W. GILES, Plaintiff,
v.
CHARLES B. TEASLEY, E. J. HARRIS, & W. A. GUNTER, JR., Board of Registrars of Montgomery, Defendants.

Come the defendants, and for answer to the complaint filed in said cause, say that the same is insufficient in law, and accordingly demur thereto, and for grounds of demurrer they assign the following:

1. That it appears in and by said complaint that the defendants constituted the board of registrars of Montgomery county and were acting in their official capacity as such registrars in the doing of the several acts complained of by the plaintiff, and that the said acts so done and complained of were acts in their nature judicial on the part of the defendants in the performance of their duty as such registrars of electors, and that no action such as the plaintiff has brought lies against them at law for anything done within their jurisdiction as such registrars. Defendants aver that all of the acts complained of by the said complainant, for which damages are sought, were within the jurisdiction given to such board of registrars by the law under which they were acting.

2. That it appears in and by said complaint, that the said defendants were, in the performance of the several acts complained of, for which damages are sought in the complaint, acting judicially and within their jurisdiction as the board of registrars of Montgomery county.

3. That the said complaint does not set forth or state when and where and how the plaintiff made application to the defendants for registration as an elector, nor set forth the proceedings upon his said application, so that a judgment can be formed as to the fact of the wrongful refusal by the defendants to admit said plaintiff to registration.

4. That the proceedings of the registration board contemplate that applications for registration should be made in writing, and the judgment and proceedings thereon are in writing, and that the said plaintiff does now show and set forth any written application to the board of registrars by the plaintiff for registration as a voter, or any judgment or proceedings on such application.

Wherefore, and for divers good and sufficient causes, the defendants say the said declaration is insufficient, and they pray judgment whether they shall make any further or other answer thereto.

GUNTER & GUNTER,
Att'ys for Defendants.

Notice is given that the defendants demand a jury on the trial of this cause.

GUNTER & GUNTER,
Att'ys for Defendants.

Filed June 27th, 1902.
H. H. MATTHEWS,
Clerk City Court of Montgomery.

MONDAY, *October* 13, *A. D.* 1902.

Court met pursuant to adjournment.
Present: The Honorable A. D. Sayre, judge, presiding.

JACKSON W. GILES *vs.* CHARLES B. TEASLEY, E. J. HARRIS, and W. A. Gunter, Jr., Board of Registrars of Montgomery County.	2124.	Damages.

This day came the parties by their attorneys and the defendants' demurrer to the complaint being argued by counsel and understood by the court, it is considered and ordered by the court and it is the judgment of the court that the said demurrer to the complaint be and the same is hereby sustained.

And the plaintiff declining to amend his complaint, it is consid-

ered and ordered by the court and it is the judgment of the court that this cause be and the same is hereby dismissed.

And it is further considered and ordered by the court that the defendants go hence and recover of the plaintiff the costs in this behalf expended, for which let execution issue.

12 THE STATE OF ALABAMA, }
Montgomery County. }

In the City Court of Montgomery.

JACKSON W. GILES, Plaintiff, *against* CHAS. B. TEASLEY, WM. A. GUNTER, Junior, and E. Jeff Harris, Board of Registras of Montgomery County, Alabama, Defendants.	Action for $5,000.00 Damages for Refusing to Register Plaintiff.

Judgment was rendered in the above entitled cause, in favor of said defendants, sustaining their demurrer and dismissing the complaint, on the 13th day of October, 1902, from which judgment the said plaintiff has prayed an appeal to the supreme court of the State of Alabama;

Now therefore, know all men by these presents, that we, Jackson W. Giles, J. W. Alstock and John W. Jones acknowledge ourselves security for all costs of the said appeal taken to the supreme court by the said Jackson W. Giles from the said judgment in said cause.

Witness our signatures, this 18th day of October, 1902.

JACKSON W. GILES.
J. W. ALSTOCK.
JOHN W. JONES.

Approved this 25th day of October, 1902.
H. H. MATTHEWS,
Clerk of City Court of Montgomery.

Filed in office this 25th day of October, 1902.
H. H. MATTHEWS,
Clerk City Court of Montgomery.

13 THE STATE OF ALABAMA, }
Montgomery County. }

To any sheriff of the State of Alabama, Greeting:

You are hereby commanded to summon Gunter & Gunter, attorneys of record of Chas. B. Teasley, Wm. A. Gunter, Jr., and E. J. Harris, board of registrars of Montgomery county, Alabama, to ap-

pear at the next term of the supreme court of said State, then and there to defend an appeal which Jackson W. Giles has this day sued out, returnable to said court, to reverse a judgment which Chas. B. Teasley, Wm. A. Gunter, Jr., and E. J. Harris, board of registrars of Montgomery county, Alabama, at the October term, 1902, of the city court of Montgomery recovered against Jackson W. Giles, and make immediate return of this writ, &c.

Witness, Henry H. Matthews, clerk of said city court, this 25th day of October, A. D. 1902.

H. H. MATTHEWS,
Clerk of the City Court of Montgomery.

Received in office Oct. 25 1902.

W. R. WALLER, *Sheriff.*

Executed by serving a copy of the within on Gaston Gunter, of the firm of Gunter & Gunter, this 28th day of October, 1902.

W. R. WALLER, *Sheriff.*
G. M. POWELL, *D. S.*

14 STATE OF ALABAMA, }
Montgomery County. }

I, H. H. Matthews, clerk of the city court of Montgomery, in and for said State and county, do hereby certify that the foregoing pages numbered from one (1) to thirteen (13), inclusive, contain a full, true and correct transcript of the record and proceedings in a certain cause lately therein pending, wherein Jackson W. Giles was plaintiff and Chas. B. Teasley, Wm. A. Gunter, Jr., and E. J. Harris, board of registrars of Montgomery county, were defendants, according to the papers on file in said cause, in my office.

And I further certify that on the 25th day of October, 1902, the plaintiff in said cause, Jackson W. Giles, did, after giving security for costs, pray for and was granted an appeal to the supreme court of Alabama, from the judgment rendered in said cause, in favor of said defendants, sustaining their demurrer and dismissing the complaint; and that J. W. Alstock and John W. Jones are the sureties for said costs.

All of which I certify to said supreme court.

This, the 10th day of November, 1902.

H. H. MATTHEWS,
Clerk of the City Court of Montgomery.

15 In the Supreme Court of Alabama.

JACKSON W. GILES, Appellant,
vs.
CHAS. B. TEASLEY ET AL., Board of Registrars of Montgomery County, Ala., Appellees. } Assignments of Error.

And now comes the appellant, by his attorney and assigns the following errors in the rulings and proceedings of the court below, from which this appeal is taken, upon which he relies for a reversal in this court to-wit:

First Assignment of Error.

Because the court erred in sustaining the demurrer and dismissing the complaint, when the allegations of the complaint showed that sections 180, 181, 183, 184, 185, 186, 187, and 188, of article 8 of the constitution of Alabama were repugnant to the 14th and 15th amendments to the Constitution of the United States, in that they were designed and intended to deprive complainant and the negroes of Alabama of their right to vote on account of their race and color, and previous condition of servitude, without depriving a single white man in the State of Alabama of his right to vote.

Second Assignment of Error.

Because the court erred in sustaining the demurrer and dismissing the complaint, when the complainant alleged that section 180, of article 8, of the new constitution of Alabama was repugnant to the 14th and 15th amendments to the Constitution of the United States, in that sub-divisions 1, and 2, of said section did not contain such a statement of qualifications for suffrage are as applicable to, and attainable by all alike regardless *to* race or color, and that said sub-divisions in effect deprive the complainant and the negroes of
16 Alabama of the right to vote, on account of their race and color, and previous condition of servitude; and that subdivision 3, of said section is equally repugnant to the said amendments to the Constitution of the United States because it is unreasonable, too general, and invests the registrars with absolute and arbitrary power, and in effect denies the complainant the right to vote because of his race and color.

Third Assignment of Error.

Because the court erred in sustaining the demurrer and dismissing the complaint when the same alleged that sections 181, 183, 184, 185, 187, and 188, of article 8 of the new constitution of Alabama

were designed and especially intended to apply to the complainant and the negroes of Alabama, and were not intended to operate against or affect any white person in said State, because all the white men in Alabama were allowed to qualify under section 180, while the negroes were refused qualification under that section, and were thus forced to wait until section 181, and kindred sections went into operation; and was part of one entire scheme on the part of the party in power and dominant race in the State of Alabama to deny complainant and the negroes of Alabama the right to vote on account of their race and color.

Fourth Assignment of Error.

Because the court erred in sustaining the demurrer and dismissing the complaint when the same alleged that section 186, of article 8 of the constitution of Alabama, was in contravention of the 14th and 15th amendments to the Constitution of the United States, in that the board of registrars composed entirely of partisan white men, were given absolute power and discretion of a court for the purpose of more effectually depriving complainant and his race of the right to vote on account of their race and color, and that the pretended right of appeal to the circuit court was given for the same purpose, because the juries of Alabama are composed exclusively of white men, negroes being excluded from service on any of the juries of the trial courts of Alabama on account of their race and color, although otherwise qualified for jury service; and have been so excluded for a great many years, so that an appeal from the decision of the registrars would result in the same discrimination and race prejudice.

Fifth Assignment of Error.

Because the court erred in sustaining the demurrer and dismissing the complaint when the same alleged facts showing that the appellees who were charged with the administration and en-
17 forcement of said suffrage provisions of said constitution refused to register complainant and large numbers of his race for no other reason than their race and color, when they were otherwise qualified under the law, and required them to produce the testimony of white men as to their qualifications and refused to accept the testimony of colored men, while all white men applying for registration were registered and were not required to produce any evidence except the affidavit of the applicant.

WILFORD H. SMITH,
Att'y for Appellant.

(Minutes 54, page 52.)

SUPREME COURT, TUESDAY, *Dec.* 16, 1902.

The court met pursuant to adjournment.
Present: All the justices.

Montgomery City Court.

JACKSON W. GILES
v.
CHAS. B. TEASLEY ET ALS., Board of Registrars, &c. } 3 Div. 368.

Come the parties by attorneys and submit this cause on briefs for decision.

And the court adjourned until Wednesday December 17th 1902 at 10 o'clock a. m.

(Minutes 54, page 160.)

SUPREME COURT, SATURDAY, *February 28th*, 1903.

The court met pursuant to adjournment.
Present: All the justices.

Montgomery City Court.

JACKSON W. GILES
v.
CHARLES B. TEASLEY ET ALS., Board of Registrars, &c. } 3 Div. 368.

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the city court there is no error. It is therefore considered that the judgment of the city court be in all things affirmed. It is also considered that the appellant, and J. W. Alstock and John W. Jones, sureties on the appeal bond, pay the costs of appeal of this court and of the city court.

And the court adjourned until Monday April 6th 1903 at 10 o'clock a. m.

19 Feb. 28, 1903.

THE STATE OF ALABAMA, *Judicial Department.*

The Supreme Court of Alabama, November Term, 1902.

JACKSON W. GILES
v.
CHAS. B. TEASLEY ET AL., Board of Registrars, etc. } 3 Div. 368.

Appeal from Montgomery city court.

TYSON, *J.:*

If we accept (without deciding) as correct the insistence laid in appellant's brief that section 186 of art. VIII of the constitution of 1901 is void because repugnant to the 14th and 15th amendments of the Constitution of the United States, then the defendants were wholly without authority to register the plaintiff as a voter and their refusal to do so cannot be made the predicate for a recovery of damages against them.

On the other hand if that section is the source of their authority, the jurisdiction is expressly conferred by it upon the defendants as a board of registrars to determine the qualifications of plaintiff as an elector and of his right to be registered as a voter. For their judicial determination that plaintiff did not possess the requisite qualifications of an elector, and their judicial act of refusing to register him predicated upon that determination, they are not liable in this action.—17 Am. & Eng. Ency. Law (2nd ed.) pp. 727, 728 and notes.

Affirmed.

20 THE STATE OF ALABAMA, *Judicial Department.*

The Supreme Court of Alabama, November Term, 1902.

JACKSON W. GILES
v.
CHAS. B. TEASLEY ET AL., Board of Registrars, &c. } 3 Div. 368.

Appeal from Montgomery city court.

THE STATE OF ALABAMA, *City and County of Montgomery.*

I, Robert F. Ligon, clerk of the supreme court of Alabama, do hereby certify that the foregoing pages numbered from 1 to 16 and

lettered from "*a*" to "*d*," inclusive, contain a full, true, and correct copy of the record, minute and judgment entries, and of the opinion, of said supreme court in the above stated cause, as the same appear and remain of record and on file in this office.

I further certify that, application for writ of error in said cause having been made, the said application was denied, and is endorsed as follows:

"Application for writ of error denied because no Federal question involved or decided. This, May 14, 1903.

THOS. McCLELLAN,
Chief Justice, Supreme Court of Alabama."

Witness, Robert F. Ligon, clerk of the supreme court of Alabama, at the capitol, this the 15 day of May A. D. 1903.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON,
Clerk of the Supreme Court of Alabama.

21 *Know all men by these presents*, that we, Jackson W. Giles as principal, and —— —— as sureties, are held and firmly bound unto Charles B. Teasley, William A. Gunter, Jr. and E. Jeff Harris, board of registrars of Montgomery county, Alabama, in the full and just sum of two hundred and fifty dollars, to be paid to the said Teasley, Gunter and Harris, board of registrars aforesaid, their certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of May, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a term of the supreme court of the State of Alabama in a suit depending in said court, between Jackson W. Giles, and Charles B. Teasley, Wm. A. Gunter Jr. and E. Jeff Harris, board of registrars of Montgomery county Alabama, in a suit for damages, a judgment was rendered against the said Jackson W. Giles and the said Giles, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles B. Teasley, Wm. A. Gunter Jr. and E. Jeff Harris board of registrars of Montgomery county Alabama citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from date thereof.

Now, *the condition of the above obligation is such*, that if the said Jackson W. Giles shall prosecute his writ of error to effect, and an-

swer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JACKSON W. GILES. [SEAL.]
PHILIP WHITE. [SEAL.]
J. W. ADAMS. [SEAL.]

Sealed and delivered in presence of
J. A. ELMORE.

Approved by—
EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

22 STATE OF ALABAMA, }
Montgomery County. }

Philip White whose name is signed to the foregoing bond as one of the sureties therein, being duly sworn deposes and says: I reside in the city of Montgomery in said county and State, and am a freeholder therein, and am worth the sum of two hundred and fifty ($250.00) dollars over and above all property exempt from sale on execution.

PHILIP WHITE.

Sworn to and subscribed before me this 25 day of May, 1903.

{ Seal of John A. Elmore, Middle District of Alabama, U. S. Commissioner. }

J. A. ELMORE,
U. S. Com'r.

STATE OF ALABAMA, }
Montgomery County. }

J. A. Adams whose name is signed to the foregoing bond as one of the sureties therein, being duly sworn deposes and says: I reside in the city of Montgomery in said county and State, and am a freeholder therein, and am worth the sum of two hundred and fifty ($250.00) dollars over and above all property exempt from sale on execution.

J. W. ADAMS.

Sworn to and subscribed before me this 25 day of May, 1903.

{ Seal of John A. Elmore, Middle District of Alabama, U. S. Commissioner. }

J. A. ELMORE,
U. S. Com'r.

On this 25 day of Mat, 1903, in the city and county of Montgomery, State of Alabama, before me personally appeared Philip White and J. W. Adams both of whom are known to me to be the

individuals described in and who signed the foregoing bond as sureties therein, and then and there each of them severally acknowledged that he executed the foregoing bond.

Witness my signature this day and date first above written.

{Seal of John A. Elmore, Middle District of Alabama, U. S. Commissioner.}

J. A. ELMORE,
U. S. Com'r.

23 I, Thomas G. Jones, judge of the United States district court, for the district of Alabama, hereby certify that Phillip White and J. W. Adams, whose names are signed as sureties to the foregoing bond, are known to me and are freeholders in Montgomery county, and I consider each of them worth over five hundred ($500.00) dollars in property subject to execution, and would approve the foregoing bond with them as sureties if the same was submitted to me.

THOS. G. JONES.

Witness my signature this 26 day of May 1903.

24 Supreme Court of the State of Alabama.

JACKSON W. GILES, Plaintiff in Error, *vs.* CHARLES B. TEASLEY, WILLIAM A. GUNTER, E. Jeff Harris, Board of Registrars, Montgomery County, Alabama, Defendants in Error.	Suit for Damages.

And now comes the said plaintiff in error by his attorney and makes the following assignments of error in the judgment and proceedings of this court, upon which he relies and expects to obtain a reversal in the Supreme Court of the United States, to wit:—

First Assignment of Error.

Because the supreme court of Alabama erred, in refusing to decide that the suffrage provisions of the constitution of Alabama were repugnant to the 14th and 15th amendments to the Constitution of the United States, in the purpose for which they were framed and enacted; they being framed and enacted for the avowed purpose of disfranchising the negroes of Alabama, without disfranchising a single white man.

Second Assignment of Error.

25 The supreme court of Alabama erred in refusing to decide that the suffrage provisions of the constitution of Alabama were repugnant to the 14th and 15th amendments to the

Constitution of the United States, in their language and meaning; they being so artfully framed that white men alone can become electors in the State of Alabama, and negroes can be excluded, and were excluded on account of their race and color and previous condition of servitude, except in such cases as happened to suit the arbitrary whims of the board of registrars.

Third Assignment of Error.

The supreme court of Alabama erred in refusing to decide that the suffrage provisions of the constitution of Alabama were made unconstitutional and void by the manner of their administration by the defendants in error, and all other boards in the State, in that they admitted all white men applying for registration to be registered as electors, and denied registration practically to all negroes, for no other reason than their race and color.

Fourth Assignment of Error.

The supreme court of Alabama erred in affirming the judgment of the city court of Montgomery, wherein the complaint of the plaintiff in error was dismissed on demurrer to the same.

Wherefore the plaintiff in error prays that the judgment of the supreme court of Alabama affirming the judgment of the city court of Montgomery, be reversed in the Supreme Court of the United States.

WILFORD H. SMITH,
Attorney for Plaintiff in Error.

26

JACKSON W. GILES
vs.
CHARLES B. TEASLEY, WILLIAM A. GUNTER, Junior, and E. Jeff Harris, Board of Registrars of Montgomery County, Alabama. } A Suit for Damages.

To the Honorable E. D. White, one of the justices of the Supreme Court of the United States:

Your petitioner, Jackson W. Giles, a citizen of the United States and of the State of Alabama respectfully petitions and shows:—

First. That a final judgment of the supreme court of Alabama, the highest court of the State of Alabama in which a decision could be had, has been rendered against him in a suit where was drawn in question the validity of the suffrage provisions of the constitution of Alabama, and the authority of said defendant board of registrars, acting thereunder, on the ground that the said suffrage provisions of the constitution of Alabama, were repugnant to the 14th and 15th

amendments to the Constitution of the United States, and the decision of the said supreme court of Alabama in effect was in favor of the validity of the suffrage provisions of the constitution of Alabama, and the authority exercised under them by said defendant board, as will more clearly appear by the certified copy of the record in said case, from the said supreme court of Alabama, submitted with this petition.

27 Second. That your petitioner being of African descent, and of black complexion known as a negro, and a citizen of the United States, and having theretofore been an elector under the laws of the State of Alabama, was on the 13th day of March, 1902, refused registration, and was not allowed to qualify as an elector in the State of Alabama, for no other reason than his race and color, by said board, who were acting under and by authority of the suffrage provisions of the constitution of Alabama, which went into effect November 28th, 1901.

Third. Thereupon petitioner filed a suit for damages in the sum of five thousand ($5,000) dollars, against said defendant board in the city court of Montgomery, and alleged in his complaint the fact of his refusal as aforesaid, and that the suffrage provisions of the constitution of Alabama, under which said board were acting, were framed for the purpose of allowing only white men to become electors in said State, and by their language and meaning only white men could become electors in said State; and that said suffrage provisions were repugnant to the 14th and 15th amendments to the Constitution of the United States, a demurrer to said complaint was sustained by the city court of Montgomery, from which petitioner appealed to the supreme court of Alabama, and the judgment of the lower court was there affirmed, as will more fully appear from the copy of the record herewith submitted.

Fourth. Because manifest injustice has been done petitioner, in the judgment and proceedings in said case, and the denial
28 of the rights claimed by him under the 14th and 15th amendments to the Constitution of the United States.

Wherefore he prays for the allowance of a writ of error, and such other process as may cause said judgment to be corrected by the Supreme Court of the United States; as in duty bound he will ever pray.

WILFORD H. SMITH,
Attorney for Jackson W. Giles.

29 (Original.)

UNITED STATES OF AMERICA, *ss:*

To Charles B. Teasley, William A. Gunter, Jr., and E. Jeff Harris, a the board of registrars of Montgomery county, Alabama, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Alabama wherein Jackson W. Giles is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, associate justice of the Supreme Court of the United States, this twenty-ninth day of May, in the year of our Lord one thousand nine hundred and three.

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

30 We hereby as attorneys of the within named defendants in error accept service of this citation & waive further service.

GUNTER & GUNTER, *Att'ys.*

Jun- 20 1903.

31 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Jackson W. Giles, appellant, and Charles B. Teasley, William A. Gunter, Jr., and E. Jeff Harris, as the board of registrars of Montgomery county, Alabama, appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein

was drawn in question the construction of a clause of the
32 Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said appellant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twenty-ninth day of May, in the year of our Lord one thousand nine hundred and three

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

33 THE STATE OF ALABAMA, }
Judicial Department. }

The Supreme Court of Alabama, November Term, 1902.

JACKSON W. GILES
v.
CHAS. B. TEASLEY ET AL., Board of Registrars, &c. } 3 Div. 368.

Appeal from Montgomery city court.

THE STATE OF ALABAMA, }
City and county of Montgomery. }

I, Robert F. Ligon, clerk of the supreme court of Alabama, do hereby certify that the foregoing pages numbered from 1 to 16 and lettered from "*a*" to "*g*," inclusive, contain a full, true, and correct copy of the record, minute and judgment entries, and of the opinion, of said supreme court in the above stated cause, and of the appeal bond by the plaintiff in error, as the same appear and remain of record and on file in this court.

I further certify that, application for writ of error in said cause having been made to the supreme court of Alabama, the said application was denied, and is endorsed as follows:

"Application for writ of error denied because no Federal question involved or decided.—This May 14, 1903.—Thos. N. McClellan, chief justice, supreme court of Alabama."

I further certify that the petition for writ of error, the writ of error, the citation and acceptance of service, the assignments of error, the petition for reversal of the judgment of the supreme court of Alabama, are hereto attached.

Witness my hand, and the seal of the supreme court of Alabama, at the capitol, this the 22nd day of June, A. D. 1903.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON,
Clerk of the Supreme Court of Alabama.

Endorsed on cover: File No. 18,988. Alabama supreme court. Term No. 337. Jackson W. Giles, plaintiff in error, *vs.* Charles B. Teasley, William A. Gunter, Jr., and E. Jeff Harris, as the board of registrars of Montgomery county, Alabama. Filed June 29, 1903. File No. 18,988.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 826.

JACKSON W. GILES, PLAINTIFF IN ERROR,

vs.

CHARLES B. TEARLEY, WILLIAM A. SUMTER, Jr., AND E. JEFF HARRIS, AS THE BOARD OF REGISTRARS OF MONTGOMERY COUNTY, ALABAMA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

FILED JUNE 20, 1902.

(16,969.)

27494

(18,989.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 338.

JACKSON W. GILES, PLAINTIFF IN ERROR,

vs.

CHARLES B. TEASLEY, WILLIAM A. GUNTER, JR., AND E. JEFF HARRIS, AS THE BOARD OF REGISTRARS OF MONTGOMERY COUNTY, ALABAMA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 2, 1903.

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3 Div. 369.

(Supreme Court of Alabama. Filed Dec. 9, 1902. Rob't F. Ligon, Jr., Clerk.)

(*Mandamus—Preferred.*)

JACKSON W. GILES
vs.
CHAS. B. TEASLEY ET AL., Board of Registrars, &c.

Appeal from Montgomery city court.

Dec. 15, 1902.—Submitted on briefs.
Feb. 28, 1903.—Affirmed. Tyson, J.

1 STATE OF ALABAMA,
Montgomery County.

Be it remembered that at a term of the city court of Montgomery, begun and holden for said county at the court house in the city of Montgomery, State and county aforesaid, on the 2nd Monday in October in the year of our Lord one thousand nine hundred and two, it being the 13th day of said month.

Present: The Hon. A. D. Sayre, judge presiding.

The following proceedings were had, and the following judgments were rendered to-wit:

STATE OF ALABAMA,
County of Montgomery.

JACKSON W. GILES
vs.
CHAS. B. TEASLEY, WM. A. GUNTER, JR., and E. JEFF HARRIS, Board of Registrars of Montgomery County, Alabama.

To the Honorable A. D. Sayre, judge of the city court of Montgomery:

The petition of Jackson W. Giles of the county of Montgomery, respectfully showeth to the court that he is a male citizen of the United States of African descent and black complexion known as a negro, and was born in the State of Alabama, and is over twenty-one years old; that for a number of years prior to the filing of this petition he has exercised all the rights and enjoyed all the privileges of a citizen of the State of Alabama and especially the right to register as an elector and to vote at the State and National elections in

2 the State of Alabama; that he has resided in the State of Alabama more than thirty years and in the county of Montgomery more than thirty years, and has paid before the first of February, 1902, all his poll taxes due for the year 1901, and is not disqualified under section 182 of the new constitution of Alabama which went into effect Nov'r 28, 1901, and that he is a person of good character and understands the duties and obligations of citizenship under a republican form of government.

Petitioner says that on the 13th day of March, 1902, while the said board of registrars were in session engaged in the registration of the voters and electors of Montgomery county at the court house in the city of Montgomery that he, petitioner, made application in due form to be registered as a voter or elector in said county and precinct and State of Alabama, and complied with all the reasonable requirements of said board of registrars, in order that they might enroll his name as an elector so that he might exercise the right of franchise in the coming election of the State of Alabama to take place on the — day of November, 1902, but that said board of registrars arbitrarily and without authority of law and without any justification or excuse, denied and refused petitioner the right to be registered as an elector under the constitution of Alabama, solely on the ground of his race and color, and notwithstanding the fact that petitioner was, and is entitled to be registered, and had then and now has all the requisite qualifications under the constitution and laws of the State of Alabama, and said board refused to enter his name on the registration books as a qualified elector, and denied him the rights and privileges of a citizen and elector under the constitution and laws of the State of Alabama, although there was no challenge offered against petitioner's application and no charges of disqualification or denial whatever made by any person to said board against the rights and the claims of petitioner to be registered as a qualified elector as aforesaid, and not only was he refused registration, but that large numbers of his race and color were also refused

3 registration at the time by said board, solely on the ground of their race and color, although possessing all the necessary qualifications under the law.

Petitioner further says that while he was refused registration as aforesaid, and large numbers of his race similarly situated and qualified as himself, were also refused registration by said board of registrars, solely on the ground of their race and color, that said registrars registered and enrolled all white persons applying for registration without a single denial or question as to their right or qualification.

And petitioner charges and says that such denial of registration to him and his race as aforesaid, was a denial by the State of Alabama to him and his race the equal protection of the law, and was a denial by the State of Alabama of their right to vote in said State, solely on account of their race and color and previous condition of servitude, and was a violation of their rights guaranteed under the

first sections of the 14th and 15th amendments to the Constitution of the United States.

Petitioner further shows to the court that the State of Alabama through its proper officers, designing and intending to abridge the privileges and immunities of petitioner and his race who were citizens and electors under the laws of Alabama and of the United States at the time, and intended and designed to discriminate against and proscribe petitioner and his race who were citizens and electors of Alabama at the time, and intending and designing to deny to petitioner and members of his race similarly situated and qualified as himself the same protection of the laws given to white citizens, and at the same time particularly intending and designing to abridge and deny petitioner and all the members of his race in Alabama similarly situated and qualified as himself the right to vote, solely on account of their race, color and previous condition of servitude, called a constitutional convention at Montgomery on the 21st day of May, 1901, which enacted and adopted a constitution on or about September 3rd, 1901, and which went into effect Nov'r 28th, 1901, known as the new constitution of Alabama under and by virtue of which the said registrars are operating, and by
4 virtue of the provisions of which said registrars claimed the right and authority to refuse and deny registration to petitioner and his race.

That the provisions of sections 180, 181, 183, 184, 185, 186, 187 and 188 of "article 8" of said new constitution of Alabama, were enacted, designed and intended by said State of Alabama, acting through the delegates to said constitutional convention, to abridge the privileges and immunities of petitioner as a citizen of the United States and of the members of his race, and were intended, designed and enacted to discriminate against and proscribe petitioner and his race, and to deny to them the same equal rights and protection of the laws enjoyed by white men in said State, and was especially intended and designed to deny and abridge the right of petitioner and his race to vote, solely on account of their race, color and previous condition of servitude, and guaranteed to them by the provisions of the 14th and 15th amendments to the Constitution of the United States, and that said constitutional convention was composed exclusively of members of the white race, while the relative population of the State of Alabama as to the white and colored races shown by the United States census report for 1900 is 1,001,152 whites, and 827,545 colored.

The said census report further shows that the colored people outnumber the whites in the following counties of Alabama, to-wit:

Autauga	county, whites	6,722	colored	11,173.
Barbour	" "	12,781	"	22,371.
Bullock	" "	5,846	"	26,098.
Butler	" "	12,494	"	13,247.
Chambers	" "	15,139	"	17,415.
Choctaw	" "	7,854	"	11,278.
Clarke	" "	11,952	"	15,838.

Dallas	county,	whites	9,285	colored	45,372.
Greene	"	"	3,307	"	20,875.
Hale	"	"	5,664	"	25,347.
Lowndes	"	"	4,764	"	30,889.
Macon	county,	whites	4,252	colored	18,874.
Marengo	"	"	8,841	"	29,474.
Monroe	"	"	10,529	"	13,137.
Montgomery	"	"	19,825	"	52,222.
Perry	"	"	6,821	"	24,962.
Pickens	"	"	10,481	"	13,921.
Russell	"	"	5,930	"	21,153.
Sumter	"	"	5,672	"	27,038.
Talladega	"	"	17,547	"	18,226.
Wilcox	"	"	6,979	"	28,652.

In verification of the above figures, petitioner files herewith, page 3, table 4, No. 66 of the Census Bulletin of the 12th Census of the United States, which he prays to be made a part of this petition.

Petitioner says that section 180 of "article 8" of the constitution of Alabama adopted for the purpose and with the design heretofore stated, is obnoxious and repugnant to the 14th and 15th amendments to the Constitution of the United States in that it divides the inhabitants of the said State into classes to-wit:—First, a soldier class; second, the descendants of soldiers, and third, a class not soldiers nor their descendants.

The class not soldiers nor their descendants are placed under greater restrictions by said section, and have greater burdens placed upon them than are required of the soldier class, or the class descended from soldiers. And that subdivision 3 of section 180 is itself repugnant to said amendments and is unreasonable and void because too loose and general in not defining what kind of good character a citizen must have, and what duties and obligations a citizen must understand under a republican form of government; and, because it leaves too wide and general a discretion to the registrars in charge of the registration of electors, and is equivalent to investing them with arbitrary power.

6 And, because sub-divisions 1 and 2 of said section do not contain a statement of qualifications which are applicable to and attainable by all alike, regardless of race, color and previous condition, but discriminates against the negroes of Alabama on account of their race, color and previous condition.

Petitioner says and charges that the said section 180 of "article 8" of said constitution was enacted, adopted and designed, solely for the purpose and with the intention of denying to petitioner and all of the members of his race in the State of Alabama the right to vote, and was artfully constructed to avoid and evade the provisions of the 14th and 15th amendments to the Constitution of the United States, so that white men alone could be registered and become qualified as electors in the State of Alabama, under the semblance of law.

Petitioner further says that section 181 of said "article 8" of

said new constitution of Alabama is repugnant to the 14th and 15th amendments to the Constitution of the United States; that while said section pretends to prescribe the qualifications of persons who shall apply for registration after the 1st day of January, 1903, it was nevertheless intended, designed and enacted especially to apply to the petitioner and to all the members of his race in the State of Alabama, and was not intended to operate against and affect the white citizens of Alabama, and that by refusing to register petitioner and the members of his race all over the State of Alabama, similarly situated and qualified, which petitioner charges is being done by the board of registrars in all the counties of Alabama, while under the same circumstances and possessing the same qualifications all white men are registered without objection; said registrars and the State of Alabama thereby purpose and intend to force petitioner and the members of his race, to wait until 1903 before they can be allowed registration when the provisions of section 181 will be in operation and petitioner and his race will be required to have qualifications greater and different than those now imposed upon white men in the State of Alabama. And, that said section
7 181 was also an artful attempt and *and* scheme on the part of the State of Alabama to evade the provisions of the 14th and 15th amendments to the Constitution of the United States, and to deny to petitioner and members of his race the equal protection of the laws, and to deny and abridge their right to vote, solely on the ground of their race, color and previous condition of servitude.

For the same reasons heretofore expressed with reference to sections 180 and 181 of "article 8" of the new constitution of Alabama petitioner says that sections 183, 184 and 185 are equally inimical and repugnant to his rights and the rights of his race guaranteed under the 14th and 15th amendments to the Constitution of the United States.

Petitioner further says that section 186 of article 8 of the new constitution of Alabama is repugnant to the 14th and 15th amendments to the Constitution of the United States in this: that said board of registrars, composed entirely of partisan white men, appointed by the State of Alabama under the provisions of the constitution adopted and designed for the purpose of disfranchising petitioner and the members of his race, were made a quasi court with discretionary and absolute power to grant or deny without reason or cause, the application of petitioner and his race, no matter what their qualifications, and their right of appeal from the decision of said board of registrars is given to the circuit court, thence to the Supreme Court, but petitioner says, that such discretionary power and right of appeal, were not given to secure to him and his race the registration which has been denied them, but were given in order to place said board of registrars beyond the power and control of this court by the speedy and summary process of mandamus and for the purpose of more effectually hindering, denying and abridging petitioner's rights to vote and the rights of his race to vote in the State of Alabama, solely on account of race and color and pre-

vious condition of servitude. And because all negroes are excluded
8 from serving on any juries in the trial courts of Alabama on account of their race and color, although otherwise qualified for such service, and have been so excluded for a great many years; and that he and his race would encounter the same race prejudice, and would obtain the same results on appeal as upon application to the board of registrars.

Petitioner says that it would be impossible for the courts of Alabama, as at present constituted, to hear and determine the cases of the thousands of negroes refused registration in the State of Alabama, before the election of November, 1902, but says it would take many years. That said section also is a skillful and artful scheme on the part of the State of Alabama to evade the provisions of the 14th and 15th amendments to the Constitution of the United States in depriving the petitioner and the members of his race in the State of Alabama of the equal protection of the laws and of their right to vote solely on account of their race, color and previous condition of servitude, under the semblance and form of law, and for the same reasons given as to article 186 petitioner claims that section- 187 and 188 of "article 8" of the new constitution of Alabama are equally repugnant to the provisions of the 14th and 15th amendments to the Constitution of the United States.

For the purpose of showing the intention and design of the State of Alabama in enacting and adopting the sections of article 8 of the constitution above referred to, and to show that said sections were adopted for the purpose of disfranchising petitioner and his race in the State of Alabama, he begs leave to file as an exhibit the speeches and debates on said section, at the time of their adoption in the constitutional convention of Alabama, which speeches and debates are filed herewith and marked "Exhibit A" and prayed to be made a part of this petition.

Petitioner further shows to the court that the State of Alabama, with the intention and design as heretofore shown by the adoption of sections 180, 181, 183, 184, 185, 186, 187 and 188 of article 8 of its new constitution, has under and by virtue of the same appointed through its proper officers a board of registrars in every county in
9 the State of Alabama, who alone are charged with the duty of registering the qualified electors in order that they may vote at the coming elections in 1902 for State and Federal office-s; and that all persons not registered are disqualified for voting at the coming election, and after the 1st day of January, 1903, all persons applying to be registered, are made subject to an educational and property qualification test.

And, petitioner shows to the court that said defendant board in Montgomery county, and all the other boards of registrars throughout the State, charged with the registration of the electors of the State as aforesaid under the above enumerated sections of the new constitution of Alabama have refused to register and continue to refuse to register all persons of African descent known as negroes, solely on account of their race, color and previous condition of servi-

tude, except in a few instances when it happened to please the arbitrary will of the said registrars, so that the great majority of the colored men of the State of Alabama numbering no less than 75,000 persons, are not registered and are refused registration by said board of registrars throughout the State, solely because of their race and color and previous condition of servitude, although possessing all the necessary qualifications for electors under section 180 of the new constitution; while the white men of the State of Alabama are permitted to register without let or hindrance, although similarly situated and qualifed as the colored men; and this petitioner charges to be a denial to him and his race the equal protection of the law by the State of Alabama and a denial and abridgement by said State of their right to vote because of their race and color, guaranteed by the 14th and 15th amendments to the Constitution of the United States.

In order to show that the above enumerated sections of article 8 of the new constitution of Alabama are administered by the officers of said State with a view to deprive petitioner and the members of his race similarly situated and qualified, of their rights guaranteed by the 14th and 15th amendments to the Constitution of the United States, petitioner begs leave to file herewith, affidavits of persons who have been denied registration in the various counties of Alabama, solely on the grounds of their race, color and previous condition of servitude, and affidavits showing that the great majority of the colored people throughout the State of Alabama have been denied registration by the various boards solely on the grounds of their race and color and previous condition of servitude although otherwise qualified to register, which affidavits are filed herewith and marked as "Exhibits 1, 2, 3, &c. in numerical order and prayed to be made a part of this petition.

Petitioner further shows to the court, that he deems the right to be registered as an elector of the State of Alabama and the right to vote in the coming elections of November 1902 in the State of Alabama, when great questions and material interests will come up before the people of the State of Alabama for review and settlement at the polls, to be of inestimable value to him and his race, and especially since after the 1st day of January 1903, he and his race who have been denied on account of their previous condition of servitude the same advantages of acquiring property and education as white men enjoyed prior to the late civil war, will be subjected to an educational and property qualification test.

And, petitioner says that he has no other adequate and sufficient remedy by which to obtain the interposition of this court in order to vindicate and secure to himself and his race the sacred rights that have been denied them, except the most gracious writ of mandamus.

Wherefore the petitioner prays this honorable court to declare sections 180, 181, 183, 184, 185, 186, 187 and 188 of article 8 of the new constitution of Alabama which went into effect Nov'r 28th, 1901, to be absolutely null and void, and to be of no effect, because obnoxious and repugnant to the 1st section of the 14th

amendment to the Constitution of the United States, and because obnoxious and repugnant to the 1st section of the 15th amendment to the Constitution of the United States as hereinbefore set forth, not only because said sections in themselves
11 discriminate between the citizens of the State of Alabama and invest the board of registrars with an unreasonable discretion and arbitrary power, and were enacted and adopted for the purpose and intent of denying to petitioner and his race the equal protection of the laws of Alabama, and with the purpose and intent of denying and abridging petitioner's right to vote, and the right of his race to vote in the State of Alabama, on account of their race and color and previous condition of servitude guaranteed under the 14th and 15th amendments to the Constitution of the United States, but*
and because the defendant board of registrars and every other board of registrars in every county in Alabama who are charged with the administration of said sections under said constitution, and acting under and by virtue of the same, have refused to register the great majority of the negro citizens of the State of Alabama, estimated to be no less than 75,000, who were qualified under the law, for no other reason than their race and color and previous condition of servitude, while white men with the same qualifications and situations were registered by said boards as hereinbefore set forth, which acts on the part of said boards is a denial by the State of Alabama to petitioner and his race, the equal protection of the laws, and a denial to him and his race by the State of Alabama of their right to vote, because of their race and color, guaranteed by the 14th and 15th amendments to the Constitution of the United States, and prays the court to issue an alternative writ of mandamus to said defendant board of registrars, commanding them to register as qualified electors of the State of Alabama, upon the books provided therefor, the name of petitioner and to issue to him a certificate of the fact and all other qualified members of his race under the constitution and laws of the State of Alabama existing prior to the adoption of said sections 180, 181, 183, 184, 185, 186, 187, and 188 of article 8 of the new constitution of Alabama, notwithstanding and in disregard of the provisions of said sections, and further commanding said board of registrars that they shall not refuse
12 to register petitioner or the members of his race on account of their race and color; or that they show cause before this honorable court at an early day to be named in said writ, if they can, why they shall not be compelled to register petitioner and his race as herein prayed for and that the alternative writ of mandamus should not be made peremptory.

JACKSON W. GILES,
Appearing for Himself and by
WILFORD H. SMITH,
Att'y for Petitioner, a Member of the Bar of the State of Mississippi, Appearing by Special Permission of the Court in this Case.

[* In pencil in copy.]

STATE OF ALABAMA,
Montgomery County.

Before me personally appeared Jackson W. Giles the petitioner in the above application for mandamus, who being sworn makes affidavit, that the matter- and things set forth in said application are true, except those matters stated on information and belief, and as to those matters he verily believes them to be true.

JACKSON W. GILES.

Sworn to and subscribed before me this 1st day of July, 1902.

J. A. ELMORE,
[SEAL.] *U. S. Comm'r.*

EXHIBIT "A."

Speech of Acceptance of Hon. John B. Knox in Accepting the Presidency of the Constitutional Convention.

GENTLEMEN OF THE CONVENTION:

I thank you for the honor you have conferred in elevating me to preside over the deliberations of this convention. Viewed from the standpoint of my profession, to which, up to this moment, my life's work has been devoted, it is a great honor indeed; for I know
13 of no high- honor that can be conferred upon a lawyer than to be made president of the constitutional convention, which represents the sovereignty of his people, and numbers among its delegates, in large part the intellect and talent of the State—those who have in the past and who will in the future exert a potent influence in shaping and directing the affairs of the State.

In my judgment, the people of Alabama have been called upon to face no more important situation than now confronts us, unless it be when they, in 1861, stirred by the momentous issues of impending conflict between the North and South, were forced to decide whether they would remain in or withdraw from the Union.

Then, as now, the negro was the prominent factor in the issue.

The Southern people, with this grave problem of the races to deal with, are face to face with a new epoch in constitution making, the difficulties of which, if solved wisely, may bring rest and peace and happiness, if otherwise, it may leave us and our posterity continuously involved in race conflicts, or, what may be worse, subjected permanently to the baleful influences of the political conditions now prevailing in the State.

So long as the negro remains in insignificant minority, and votes the Republican ticket, our friends in the North tolerate him with complacency, but there is not a Northern State, and I might go further and say there is not an intelligent white man in the North, not

gangrened by sectional prejudice and hatred of the South, who would consent for a single day to submit to negro rule.

If the negroes of the South should move in such numbers to the State of Massachusetts, or any other Northern State, as would enable them to elect the officers, levy the taxes and control the government and policy of that State, I doubt not they would be met, in the spirit, as the negro laborers from the South were met in the State of Illinois, with bayonets, led by a Republican governor, but firmly but emphatically informed, that no quarter would be shown them in that territory.

One has studied the history of recent events to very little purpose who has failed to discover that race prejudice exists at the
14 North in as pronounced a form as at the South, and that the question of negro domination when brought home, will arouse the same opposition in either section.

And what is it that we do want to do? Why, it is, within the limits imposed by the Federal Constitution, to establish white supremacy in this State.

This is our problem, and we should be permitted to deal with it unobstructed by outside influences, with a sense of our responsibilities as citizens, and our duty to posterity. The southern man knows the negro, and the negro knows him. The only conflict which has, or is ever likely to arise, springs from the efforts of ill-advised friends at the North, to confer upon him without previous training or preparation, places of power and responsibility, for which he is wholly unfitted, either by capacity or experience.

But if we would have white supremacy, we must establish it by law—not by force or fraud. If you teach your boy it is right to buy a vote, it is an easy step for him to learn to use money to bribe or corrupt officials or trustees of any class. If you teach your boy that it is right to steal votes, it is an easy step for him to believe that it is right to steal whatever he may need or greatly desire. The results of such an influence will enter every branch of society; it will reach your bank cashiers, and affect positions of trust in every department; it will ultimately enter your courts, and affect the administration of justice.

The justification for whatever manipulation of the ballot that has occurred in this State has been the menace of negro domination. After the war, by force of Federal bayonets, the negro was placed in control of every branch of our government. Inspired and aided by unscrupulous white men, he wasted money, created debts, increased taxes until it threatened to amount to confiscation of our property. While in power and within a few years, he increased our State debt from a nominal figure to nearly thirty millions of dollars. The right of revolution is always left to every people. Being prostrated by the effects of war, and unable to take up arms in
15 their own defence in some portions of this State, white men greatly in the minority, it is said, resorted to stratagem—used their great intellect to overcome the greater numbers of their black opponents. If so such a course might be warranted when

considered as the right of revolution, and as an act of necessity for self preservation. But a people cannot always live in a state of revolution. The time comes when, if they would be a free, happy and contented people, they must return to a constitutional form of government, where law and order prevail and where every citizen stands ready to stake his life and his honor to maintain it.

It has been urged in some quarters as a reason why this movement for a new constitution should be defeated that we propose to adopt a suffrage plank which will offer to the negro an incentive to obtain an education, while the child of the white man will be without a like stimulant because protected in his right to vote, without regard to the density of his ignorance.

I do not understand that any delegate to this convention is pledged to any such legislation. We are pledged not to deprive any white man of the right to vote, but this does not extend unless the convention chooses to extend it, beyond the life of voters now living.

EXHIBIT A.

Official Report of the Proceedings of the Constitutional Convention of Alabama.

Fifty-second day.

MONTGOMERY, ALA., TUESDAY, *July* 23, 1901.

The convention met pursuant to adjournment, was called to order by the president, and opened with prayer by Rev. Dr. A. L. Andrews.

Mr. SMITH (Mobile): I am instructed by the rules committee to offer the following resolution:

The clerk read the resolution as follows:

Resolved that the article reported by the committee on
16 suffrage and elections be considered, adopted or rejected section by section, and after every section has been so considered and adopted substitutes for the entire article may be offered and acted upon without any motion to reconsider the prior action of the convention.

Mr. SMITH (Mobile): I move the adoption of the resolution as reported by the rules committee.

Upon a vote being taken the resolution was adopted.

Mr. COLEMAN (Greene): Mr. President, and gentlemen of the convention: It is not my purpose to undertake to make a strictly legal argument at this time upon the various provisions contained in the report of the committee on suffrage and elections, but rather to state the conditions which confront us, the circumstances which led to the calling of this convention, and the way in our opinion to relieve the people of the State of Alabama from the great burden that now rests upon it. I think it pertinent in this connection, in order

that our conditions may be understood, not only at home but abroad, to review, by a statement of facts, which transpired many years ago, that the people who were disposed to criticise us in our conduct may better understand what we passed through and the end which we aimed to attain. That this convention was called by the Democratic party cannot be denied, and that it was made a party measure and as such sustained by the party. The duty rests with us to construct an organic law which will operate fairly and justly to every inhabitant in the State without regard to party or previous condition I do not believe that the article prepared is properly understood. There has been an effort made to impress the people of Alabama that the delegates to this convention were under no obligations or pledges to the people of Alabama. It should be remembered that the three conventions of Alabama which last assembled as a convention of the Democratic party, declared that no white man should be disfranchised except for crime. Mr. President and gentlemen of the convention, it has been said that this provision was hastily adopted, without deliberation. I cannot
17 conceive how three conventions, successive conventions, could unanimously adopt the same provision without having attention called to it, this provision, or the charge made that action was without due consideration. It may not be improper to state here that the platform adopted by the convention which last assembled in Montgomery was not framed without consideration and deliberation. Present at that time were two members, one a member of Congress, and an ex-member, a distinguished editor of a leading paper in this State, and leading delegates from various sections of the State. It may not be improper to state here that the chairman of the committee instead of writing the word "white man" wrote the words "qualified voter" in order to obviate some of the difficulties and troubles which seemed to have arisen since that time, and it was after due consideration, due deliberation, that the committee on platform inserted the words "white man." Those are the facts in regard to the preparation of the platform which was presented to the convention. In addition to that, Mr. President, at a time when it seemed that the calling of this convention was in danger, hanging adoption and rejection, the chairman of the campaign committee issued a circular to every member and they met in pursuance to that call in Birmingham, and in order that the people of the State might be assured thereof without dissenting voice pledged themselves to stand by the pledges made to the people in convention assembled and it was, I have no doubt, that assurance which succeeded in calling together the convention as now assembled. Under these circumstances, Mr. President and gentlemen of the convention, I cannot see myself, how any man can claim exemption from these obligations, except he be convinced in his own mind that to stand by them would involve his honor under the oath he has taken to support the Constitution of the United States. I would ask no man to violate his oath, but if he can comply with the oath that he has taken, and perform his pledges to the people of Alabama,

I see no escape from the pledges and at the same time not violate our oaths, it seems to *be* it is our bounden duty to do so. Mr. President and delegates of the convention, this Government
18 was founded by white people. Its institutions have been preserved and enforced by the white race of this country, and it is within the past few years that the negro became a qualified voter and citizen of the United States. In most of the States of this Union the proportion of such voters is so small that their influence is not felt in the general election. It is only in the Southern States that he has become an important factor, and under the present laws is a menace to our civilization, our happiness and prosperity. I would not violate any provision of the Constitution, but it is my opinion that we should go to the utmost limit allowed us to continue in control of this State and its political interests, that race of people which so long has preserved its institutions and brought us through so much trouble, to our present prosperous condition. (Applause.) I hope the convention will bear with me as I proceed to show that this conclusion is not reached by any prejudice against the negro. There are but few, comparatively, of the old slave holders who are alive at this time, and who are present in these deliberations. Mr. President, I am not ashamed to say that I was among those few. Not only myself, but my ancestors before me were slave owners in this State. The third generation back was one who in his fe-ble way undertook and put at stake his life in order to give validity to the Declaration of Independence, and which resulted in the framing of the Constitution of the United States. Protected in his rights, as others were, no man read in the history of his country, will undertake to say that without such provisions the Constitution of the United States would ever have been adopted. We feel sure, and so do they, that they had a right to regard these persons as property, and that it was secured by the organic law of the country. So far as the moral question arises, I am one of those old fogy men who believe in the inspiration of the Scriptures and we are told that Abraham was a friend of God, and Moses was an inspired lawgiver, and until some higher authority than the Creator and omnicient God himself shall arise and declare a different code of morals, I am one prepared to stand justified by the records
19 of that book. Now, Mr. President and gentlemen of this convention, bear with me a few moments. Born on a plantation, raised up with the negro, I have had an opportunity to know his weak points and his good traits. Mine may have been the history of others, but I remember well during the civil war, or the war between the States, sending my negro man from Vicksburg, surrounded as it was with Federal troops, with a letter to my wife, and he carried it safely home, and I never doubted that he would do so. I wish to say in behalf of this race that at the battle of Missionary ridge, when I had the misfortune to be shot down, he was inside the Federal lines for two or three days, and he worked himself out, and found me in the hospital, and waited upon me for three months, and accompanied me home. I wish to say, moreover, for these peo-

ple that upon my plantation for the greater part of the time, there was no white man, but a negro was in command as superintendent, and my wife and children apprehended no trouble or danger whatever from our slaves. He was as loyal as a man could be. This is the history of the negro as a slave. In the year 1865, the year that emancipation became effective, I had the fortune to be elected solicitor of the fifty district, including the counties of Greene, Marengo, Sumter, Pickens, Choctaw, where the negro was most numerous, or perhaps as numerous as any counties in the State in proportion to the population. As solicitor at that time I had every opportunity to judge him and his characteristics, and I venture to say that during that time we heard not of a single case of assault upon our fair women, or of murder, way-laying, or other violations of the law by them of an aggravated character, except that of theft which was then characteristic of the race. That was his attitude from the year 1869 to the days of reconstruction. At that time the carpet-bagger arose, and the scallywag in this country, and I do not wish to be understood as saying that all of those who came from the North, and designated as carpet-baggers, were bad men, but the majority of them who came here, came not for a good purpose. Then we had the midnight meetings. Thousands would gather upon the word sent; inflammatory speeches were made to them, and this peaceful race, within a short time, had developed the character of savages. The race which had been quiet so long converted this whole country into pandemonium. I have seen with my own eyes, a thousand of them around the ballot box and not a white man was permitted to reach the ballot box. I have known, delegates of this convention, one thousand five hundred armed negroes, to enter a little village on one occasion, for the purpose of creating consternation and fear among the whites. I have known a judge trying a case, and a Republican judge at that, and under the testimony came to the conclusion that the defendant should be held or committed for trial. I have known these defendants to rise from their seats and deliberately shoot the judge through the head, scattering his brains upon the floor. I know*n*, and the parties are living now, who, dressed in Federal uniforms, met by appointment known leaders of the negroes and they declared that they were ready to arise with the axe and the torch and burn and slay men, women and children. I have been told by a delegate upon this floor that he knew of a negro boy sixteen years of age who voted sixteen times, once for every year of his age, and defied arrest or investigation under the laws passed in reconstruction days when that race was in power. We know that our State was pillaged, our counties strangulated, and the main purpose seemed to be that of plunder and destruction. Now I mention these facts for this purpose. Here was a peaceable race of people, obedient in law, and here was pandemonium raised when they were no longer restrained by law, and were inflamed and led. Now what happened at that time?

Mr. GRANT (Calhoun): Will the gentleman allow me to interrupt him? I just want to say——

Mr. PRESIDENT: Does the gentleman yield?

Mr. COLEMAN (Greene): I am discussing the question at this time.

Mr. GRANT (Calhoun): I have a very perfect recollection of all those kind of performances——

Mr. PRESIDENT: The gentleman will be seated.

Mr. COLEMAN (Greene): At that time and under those cir-
21 cumstances arose the organization that was denominated Ku Klux. This organization was guilty of excesses and *were* not countenanced. It soon disappeared. That was the condition of this country when the people resorted to a more peaceful and effective method securing predominance in this State through the ballot box. I wish the fact of our condition to be known, and while there are those of us alive yet who know these facts, I think they should not be forgotten. Now if the delegates will consider since that time, the white race has predominated in this State, and the people who have voted at all elections, and preserved us, have been the white race, and that without regard to literacy or illiteracy. They have all voted, and they have voted from the first establishment of government in this country down to the present time. Contrast these two periods. See what condition we were in when the negro predominated in this State, and made our laws for us, and enforced them, and see our condition when it passed from them back into the hands of the white men. Can anybody look upon these two pictures and come to any conclusion other than that the negro as a race is incapable of self-government? and has no appreciation of the duties and obligations or a citizen of a republican form of government, or that the white man, by reason of belonging to the white race, or his educ-tion, or some other characteristic, is competent to rule and can be trusted with the State's government with perfect safety.

The facts cannot be denied, and seem to be sufficient to satisfy anybody of the truth of the preamble to the platform of the Democratic party, that the one race is capable of self-government as a race and the other as a race should not be trusted with the right to vote. Now, Mr. President and delegates of the convention, having these matters in view, having our pledges before us, we have tried to frame an article upon suffrage which would preserve our institutions, and we have at the same time tried to comply with the fifteenth amendment of the Constitution, and have admitted to the exercise of suffrage every competent negro in the State. I do not
22 doubt and I have heard no man yet say, that every person of the negro race who ought to vote has not been permitted to vote and the only question that seems to trouble some of our people is whether the white man shall vote and not the negro. That is what confronts us to-day. I think it is our duty as Democrats, and as citizens of this State, to comply with our pledges, and admit to the exercise of the franchise every white voter if it can be done

legally. So far as the details of the plan submitted are concerned, they will come up as we proceed section by section. The committee is not partial to anything they have said or written in the article. We have presented to you that which seemed as the best solution, but if any man has anything better than that which we have presented to you, no one will join in its adoption more readily and satisfactorily than myself. I know full well, delegates of this convention, that during the few years that will be spared to myself, and to men of my age, we will be sure to maintain our supremacy and good government. But we look to conditions that may exist fifteen, twenty or thirty years from now, when the old men will be gone and when the question will be for the younger members of this convention and our children who have not yet arrived at the state of manhood. That is what we are looking out for; that is what we desire to provide for and I shall most sincerely invoke your earnestness and ability in solving this great question, which is now under consideration. We do not believe that it is an insult to confer the franchise upon the descendents of those who wore the grey. It is recorded that Moses of old said to the Children of Israel, "Teach the statutes to your children, as you lie down; teach them as you walk in the way and as you get up;" and we believe that the old Confederate soldier has taught his children to love their country and its laws and government. Mr. President, it is no dishonor to say to Confederate soldier's son, that the State recognizes that you are a better citizen and have a better right to vote than the negro who can read and write. I think it is due him, and I would rather this right hand of mine would become palsied rather than it should write "disfranchised" against one of their names. I would
23 rather my tongue would cleave to the roof of my mouth, before I would pronounce so unjust a sentence against him. Those are my sentiments on this question, and I have no doubt, as a lawyer who has investigated the case, that his enfranchisement is perfectly constitutional. Mr. President, I may have been betrayed into saying too much and I will not say any more——

Cries of "Go on, Go on."

Mr. COLEMAN: Now, then, to refer rapidly to another provision. Men who have objected to what might be called the "understanding clause" merely have not apprehended its true meaning. Surely, they have not understood that it embodies the Federal law of the United States with reference to naturalization of foreigners; surely, they have not considered that before that could be declared unconstitutional the courts would have to declare unconstitutional the laws which have been adopted by Congress applicable to the naturalization of foreigners. The thing that troubles me is not what is now to transpire or to transpire within the next few years, but that which comes after that, and whether the permanent requirements are sufficient or not to protect the people in their rights, the civilization of this country, and the happiness of the people in the permanent plan. That prescribes a property qualification, an understanding qualification to read and write, and it also provides for

those who have been regularly engaged in some lawful employment for a year. There never was a sentence or provision, more perverted or less understood, than that provision in the article reported by the committee on suffrage and elections. The committee was at least a day and a half or two days selecting those words, they used the word "engaged" because it had often been interpreted by the supreme court of this State, and it is not, as I have seen in the papers, a provision which requires not only that a man should always be employed but that he should have some profitable employment. There is nothing further from its meaning. We all know that a man is engaged in business when he holds himself out as a party ready for employment. As has often been illustrated in the case of a lawyer—he is engaged in the practice of law
24 whether he has a client or not. A physician is engaged in the practice of medicine if he holds himself out as a physician and is really, that is his business without regard to the number of patrons he may have. The purpose of the qualification was to reach people passing from place to place without employment—tramps, as it were, though not strictly within the definition of the word tramp as defined in the Code of Alabama. I would willingly accept any substitute or amendment which could reach or supply the ends intended by that provision. Mr. President, I believe I will say nothing more at this time, and move that we take up this report section by section in accordance with the rules of this convention.

Fifty-third day.

MONTGOMERY, ALA., WEDNESDAY, *July* 24, 1901.

The convention met pursuant to adjournment, was called to order by the president, and opened with prayer by Rev. Dr. A. L. Andrews.

Mr. O'NEAL (Lauderdale): Mr. President, the problem which the 14th and 15th amendments to the Federal Constitution forced on the States of the South, was the most momentous ever submitted to a free people. In the language of one of her greatest sons, "It is a problem in solving which the South must stand alone, in dealing with which she must come closer than ambition or despair have driven her, and on the outcome of which her very existence depends. This problem is to carry within her body politic two separate and distinct races, and nearly equal in number. She must carry these races in peace, for discord means ruin. She must carry them separately, for assimilation means debasement. She must carry them in equal justice, for to do this she is pledged in honor and gratitude. She must carry them to the end, for in all human probability she will never be quit of either."

To solve this problem, to remedy the existing evils of an unrestricted and debauched suffrage, and to secure for ourselves and our posterity the benefits of enlightened government, and of
25 pure and lasting freedom was the paramount object of this convention. That was the chief inducement by which the

people's consent to our being here was obtained, and that was the charge and duty with which we were invested and which we would be recreant to our solemn trust did we not perform faithfully and efficiently. Mr. President, realizing these facts, and recognizing their weight, the committee on suffrage approached its task of *ballot* reform, with all its immense and grave responsibilities, with its certain consequences for good or ill, plainly before them, knowing that the very life of the State depended on the wise and permanent solution of this problem. Mr. President, we cannot afford to fail; we must accomplish the redemption of our elections from the incompetency of the electors; from fraud in their management, and make permanent and secure honest and efficient government in Alabama.

No committee ever labored more earnestly, more faithfully, with a more profound sense of the gravity and importance of its work, and we lay before you our completed task which carries out every pledge, which violates no provision of the Federal Constitution, and the adoption of which we sincerely believe will purify our electorate, will remove forever the necessity for methods which can no longer meet our approval and will mark the commencement of an era of better government of more lasting peace and prosperity in Alabama.

Mr. President, the movement for a constitutional convention in this State was but the protest of the people of Alabama against a condition of affairs that had grown intolerable. The right of a sovereign State to regulate and control the suffrage of its citizens was older than the Constitution. Even in colonial times the right to vote had been regulated by the several assemblies and not by Parliament, and was not surrendered when the Federal Union was formed. When, after the close of the civil war, the victorious North, flushed by its triumph, animated by hate and passion, and to humiliate and degrade the South, attempted to strike down this paramount and sovereign right of the States, it undertook to reverse the practice of the country since the foundation of the Federal
26 Government and of even a more remote past. Mr. President, this review of the debates in Congress and the construction by the highest courts of the land, of the objects, purposes and effects of the two amendments to the Constitution, show beyond controversy, that they do not oppose, as many seem to believe, an unsuperable barrier to the disfranchisement of the negro. That there were many supporters of the 15th amendment when it was being framed, who desired to so amend it as to place wholly under the control of the Federal Government all future elections in the States, and to make it impossible for any State to regulate its suffrage, we concede, but the history of that amendment also shows, as we have seen, that many of the States of the North whose Senators and Representatives participated in the preparation of that amendment to the Constitution, contained considerable bodies of negroes little better fitted for the duties of electors than the lately manumitted slaves of the South, and it is only fair to assume that they were unwilling to prescribe a rule of such tyranny and disas-

ter, and that its adoption by the requisite number of States would have been rendered doubtful if such a purpose had found positive and arbitrary expression therein.

Mr. President, as we have seen the first section of the 14th amendment *made all negroes citizens of the United States and of the* States of their residence. The amendment which followed prohibited the denial or abridgement of that vote for three certain specified reasons, or either of them, and for those only. For any other reason their right to vote may be either denied or abridged. You cannot say that because the effect of our plan will be to restrict the right of the negro to vote, that it necessarily violates the terms or spirit of that amendment. For with the same force of reasoning you could say that an educational or property qualification imposed on all alike would result in denying to the great mass of negroes the right to vote, and was therefore unconstitutional. If the effect or result of a law restricting suffrage was to determine its construction it would have been held that the effect of the
27 provisions found in the Mississippi constitution requiring a voter to be able to understand or give an intelligent explanation of the constitution militated against this article of the Federal Constitution. It would have been held that the laws of Massachusetts which impose an educational qualification, of Rhode Island which demanded a property qualification, were in conflict with the 15th amendment. In the one case it could be truthfully said that the whole or greater part of the negro race in those States were disfranchised, because they on account of their poverty or ignorance were unable to vote. Yet, in the debates in Congress, and in every judicial construction of the two amendments, the presence and continual existence of these and other restrictions on suffrage in the laws and constitutions of other American States show that they are not antagonistic to the two amendments, that the question of their violation of the amendments is not determinable and has not been determined in a single instance by the effect or result of the restrictions imposed upon the voting of the negro race.

I therefore assert that the States can impose any restriction that it may see fit on suffrage which is not directed in hostility to the negro race, not imposed on account of his race, color or previous condition of servitude, and will not when tested by enlightened judicial construction be disturbed. If we abridge or deny the negro the right to vote, we take this action not in hostility to him as a race, not on account of his color or previous condition of servitude, but because his exercise of suffrage without restriction make it unsafe to the life of the State and detrimental to all the interests of the people among whom he resides. We can deny the right of suffrage to the native- of other countries, or extend the age of majority from 21 to 30 years, for it has been decided that the 15th amendment was intended to protect the negro race alone. No, Mr. President, we are not in this hour of our State's deadly peril seeking to wreak any vengeance upon the negro or venting any ill will on account of his race or color; but
28 we are restricting our suffrage for the sake of the life of our government, for its honest and faithful administration, for the

sake of our civilization, for public morals, for personal integrity, for the emancipation of all that is good and pure among us from that bondage of the soul and of thought that has been forced to participate in wrong doing for fear of a greater evil. We perform this duty for virtue for decency, for religion, for liberty, for life itself. The enfranchisement of the negro race furnished one of the darkest chapters in the history of this Republic. No king, however despotic, would have subjected his subjects to the peril, the ignominy, the moral and financial ruin which has walked in the train of this unwise experiment. As the editor of the Chicago Chronicle recently said: "The history of the world may be searched in vain for a parallel for the spirit of savagery which inflicted upon a defeated and impoverished people the unspeakably barbarous rule of a servile race just liberated from bondage." As a distinguished English statesman recently wrote: "To nearly all Europeans such a step as the grant of the suffrage to the negroes *en bloc*, seemed then and still seems monstrous."

After over a quarter of a century's experience we know that it is as much a failure to-day as it was the hour it was first inaugurated, hence I but voice the sentiment, not only of the white people of Alabama, but of the intelligent, unbiased judgment of the North, and of the civilized world when I denounce the 15th amendment as not simply a political blunder but a crime—a crime against the white people of the South—a crime against the black people of the South—a crime against local self government, and the sovereign rights of the States, for I am sure the time has come when we can challenge the criticism and the favorable verdict of the civilized world to whom we can show and who have already seen and know that we have tried in humiliation and under protest, but still in patience, the experiment of unlimited suffrage, which heedlessness, animosity and hate put upon us, that we have tasted its bitterness, drained the cup of hatred and empiricism to
29 its dregs, inhaled its poison until the State reeled from its effect and that it has been demonstrated after a third of a century that this investiture of the unqualified element of our population with the sovereign role of suffrage was a costly and a ghastly failure—a crime against us as well as the negro.

In the dark days of reconstruction Thomas A. Hendricks declared in the Congress of the United States that the 15th amendment was a violation of the original compact between the States and changed the nature of our government. It- adoption was secured by force and fraud and in the States of the South its ratification was compelled by military authority. The pretext that it was necessary to secure the results of the war is not sustained by history, for Congress had solemnly declared that the war for the Union was not waged to free the slaves and Abraham Lincoln has said, "I did not at any time say that I was in favor of the negro suffrage. I declared against it. I am not in favor of negro citizenship." This opinion it is said he never changed. The impartial student of history knows that this amendment would never have been proposed had it not

been confidently believed that if adopted it would perpetuate the rule of the Republican party.

Mr. President, the white race must dominate because it is the superior race, and in that domination the negro will find the safest pledge and guarantee of just and impartial administration. We remember with gratitude that during the dark days of the war, when our fathers and brothers were at the front fighting the battles of the Confederacy the negro was left at home, and in many cases the sole protector of the helpless and defenceless women and children of the South. We recall with gratitude the fact that in not a single instance did he betray his trust. He worked in the cotton and corn fields to feed the armies that were fighting to rivet the chains of slavery on his limbs. No higher tribute could be paid to the institution of slavery. While all this is true, while we propose to accord to the negro all his rights in the court, to share with him more than his just proportion of the educational fund, and to accord him that justice which the strong always owe to the weak, we can never consent to share with him the responsibilities of our Government. Mr. President, this is not a sectional issue, the race problem is no longer confined to the States of the South. The acquisition of the Sandwich islands, the Philippines, Porto Rico and the control of Cuba, has forced the race problem to the attention of the whole country, and in the wise solution of this question we have the sympathy instead of the hostility of the North. Mr. President, wherever the white race has come in contact with that inferior race whether in Massachusetts, in Kansas, in California, or Alabama, whether with the Mongolian, the negro or the Indian race, race instinct will assert itself and the white will dominate and control. It has been wisely said that this race instinct is of divine ordination. It should not be decried, derided or denied, because it preserves the integrity and purity of each race. The races of men are the creations of God, the mark of his will. He who attempts to overcome this race instinct is defying a power which is higher and wiser than that of man, and which will in the future as it has in the past preserved the social purity and integrity of each race, preventing that assimilation and debasement the very contemplation of which fills our minds with horror and repugnance. We cannot afford to leave the ballot in the hands of enough negroes to form a respectable faction. For if we do, whenever the whites divide, they hold the balance of power and we have failed to accomplish our mission. Have we grown so careless of the past that we can undergo that danger? Cannot we brothers, kinsmen, inheritors of the glorious past, united as we are by every tie of affection and interest, joint sharers of the blessing of free government transmitted by our fathers, can we not forego our petty bickerings and unite to accomplish this glorious mission? Let us be equal to this great occasion, this glorious opportunity in the life of our State, and put into our constitution an article on suffrage that will guarantee to future generations the blessings of Anglo-Saxon civilization and liberty in

this State. We cannot afford to disfranchise the ignorant
31 or illiterate white. It was the illiterate and uneducated white man that fought the battle of the Confederacy. They and their descendents were educated not in books but in the traditions and principles of free government. The race to whom they belong have been educated for centuries in the practice, participation and conservation of free institutions. The men who won Magna Charta from King John were uneducated and illiterate, and yet in the language of another, they were the men who from merely hereditary aptitude, acquired for generations in the administration of free institutions were enabled to lay their foundations deep and secure in England. The negro on the other hand has no traditions of liberty, no pride of ancestry, no environments which fit him to intelligently discharge the great duties of citizenship. I, for one, can never consent to cast my vote to deprice a single man who wore the gray or his descendents, whether he be learned or illiterate, the right of suffrage. Mr. President, the committee has been fortunate in having as its chairman not only a distinguished lawyer, learned in all the learning of the law, patient and painstaking, but a patriot who has lived in that section of the State where the evil of an unrestricted suffrage has been most severely felt, and who has earnestly labored to present a plan which will carry out every pledge and yet accomplish the mission for which the people have delegated us to assemble in convention.

Mr. OATES: In the time limit fixed, I shall endeavor to say nothing except that which may be considered to some profit, and is absolutely pertinent to the question in hand.

Now, sir, it has frequently been asserted that the primary object in calling this constitutional convention was to completely eliminate the negro from politics or disfranchise the negro. This, gentlemen, is stating the question too narrowly. The primary and broad object was to seek to reclaim our beloved State from that evil into which it had fallen, of dishonest elections. How did we get there, and who is responsible therefor?

32 I am by nature a conservative. I am entitled to no credit for it because I was born that way. I am not radical in anything pertaining to public affairs; never was, and as long as I retain my memory and reasoning powers never will be, and I never will if I know it, be a party to an injustice to anyone—it matters not what may cause the exigency.

Now, sir, we will take the negro. We find — in his native Africa a savage. He is not responsible for his being in America, and in a state of slavery. He is not responsible for his emancipation. He is not responsible for his enfranchisement. He had no agency in any of it and there is not a delegate on this floor who will rise in his place and say that he had, or that he did. Then, how was he enfranchised? You know by whom. By the policy of those who fought us in war and conquered us, the Federal administration. They saw proper, as a part of their policy, towards this conquered people, and this large population who had been emancipated from

slavery by a war that had been urged upon us. As a part of their policy they passed the fourteenth and fifteenth articles of the amendment. The negro, therefore, is not responsible for it. It was the work of the white man. The negro, when informed that he had been emancipated was grateful to those whom he understood had done that work and, gentlemen, whether it was beneficial to him or the reverse this was but the bubbling up of nature. Even the scorned earthworm that you trample upon will turn and sting you, it is only nature. Everything—the birds of the air, the animals and human beings, desire to be free, although in the case of African slavery it has benefitted the negro because it lifted them higher in the sunlight of civilization than anything before. It was a blessing to them, but it was only natural that they should aspire to freedom and welcome it, and when it came, to be grateful to those whom they understood brought it. In a like spirit of gratitude they were grateful to the people whom they understood had enfranchised them. They were much misled and misinformed, and I think with all their misinformation they did remarkably well.

33 Now, when the distinguished delegate, the chairman of this committee, was on yesterday addressing this convention, pointing out the abuses of the elective franchise at the hands of these people, he seemed to charge it altogether to them. I differ with him in reference to that part of our history, by charging it to the carpet-baggers and scalawags with white skins who led it on. I want to place the responsibility where it belongs.

Mr. COLEMAN (Greene): Did the scalawags lead away the white people in that way?

Mr. OATES: They led the negroes and the negroes have always been led by white people. One statement of the chairman, (Mr. Coleman) was, that a negro boy 16 years old had voted 16 times. Gentlemen, I happen to know about that, and the chairman probably got it not directly but indirectly from me.

My law partner with the act of 1868 in his hands, in which the carpet-bag legislature had made it an indictable offense to challenge anybody who offered to vote, with that statute in his hands, carried his office boy 16 years old to the voting place in my town of Abbeville, and voted him one time for every year he was old. He did it to show the infamy of carpet-bag legislation, and not that of negro enfranchisement. Let me say furthermore. I suffered as much from reconstruction, and took as great a part in it personally as anybody else, but that is not material to the consideration of this question. I am making no complaint on that now, though I had a right to complain. I will tell you what I conceive to be true statesmanship, it is to act with conditions definable. We may be indignant about some of our past history. We may feel that what transpired 25 or 30 years ago is irritating, and as I have seen black heads banked around the polling boxes, and I could not get there to vote without swimming through them about 100 yards deep, I felt the sting of it. When a company of Federal troops was sent to my town, I was arrested and put under bond of $10,000. that I would not hurt

any carpet-bagger, because I and one or two more one-armed
34 men like myself, got after one and run him out of the county and I have not any respect for the Ku Klux of that day. They were inefficient, or the negroes would never have been led into the errors they were.

The negroes were enfranchised, and I think wrongfully. I opposed it. It is the only instance in history where the Congress of the United States violated its fundamental laws, and undertook to fix suffrage for the States. They never did it before, and have never done it since. The negroes were enfranchised and they went right on and crowded to the polls, and they were in the hands of carpet-baggers and scallawags and being led by them, brought governmental evils almost untold, and there were but two ways to correct it. One of these was to go to the polls with shot-guns and disperse them. We either had to leave our homes or stop that kind of thing, and if we took guns to the polls somebody would have gotten hurt. The other way was to cheat them, I was an advocate of the latter because it did not take life. Now, I never changed votes with my one hand, but I upheld it and counselled it with those who did. I am just as guilty as those who did. I am about like the parson who lived in my county before any railroads had come to that country, and they hauled cotton in wagons clear to Montgomery, and these black prairie roads were almost impassable. The old parson had a fine 6 mule team loaded with cotton one day, and with his son John to drive started to Montgomery. The roads were awful, and the wagon sunk into the mud and had to be pried out time and again. John was a little wicked and disposed to swear. The old man protested, "Johnny, my son, don't curse that way, that is wicked." After a while the wagon got stuck and he tried to pry it out, and tried to get the mules to pull it out, but it was all without effect, and John says Father if you will just step aside and let me cuss these mules a little while, I believe we can get this wagon out. The old man seeing that everything else had been tried in vain, got out behind the tree and says "Now, Johnny, you may cuss them just a little."

Well, Johnny mounted the saddle mule and popped his whip
35 and hollered: "Hell and twelve, come out of the mire." The mules got down steadily to it, the old man saw the wagon moving, which so delighted him that he cried out, "Thirteen and the devil, cuss them a little more Johnny."

I was no better than Parson Reaves, I told them to go it, boys, count them out. We had to do it. Unfortunately, I say, it was a necessity. We could not help ourselves. We had to do it or do worse. But we have gone on from bad to worse until it has become a great evil. It has gone to the point where the negro found out some time ago, that there was no use for him to vote. White men had gotten to cheating each other until we don't have any honest elections. That is the trouble we have to grapple with. Now, it is said that the right way to grapple with it, is to disfranchise the negro, and according to our platform no white man shall be disfranchised. If no white man is to be disfranchised then there is

nobody to disfranchise but the negro. As we have taken an oath here to support the Constitution of the United States, and if there is nobody to be disfranchised but negroes, and we disfranchise them, how does that fit the Constitution that we have sworn to support. Now, the platform has a pledge in it. I was nominated under it. I was not there when the platform was adopted, nor was I present at Birmingham at the meeting when the delegates ratified it and said that they would stand to it. I said all the time on the stump that I would vote for *a* support a reference of the Constitution back to the people. I was opposed to increasing the rate of taxation, but I was in the field and wanted to come to the convention not for any honors that it would bring to me personally, but to pay a debt of gratitude I owed to the people of Alabama for having honored me. I was willing to aid them by lending my feeble efforts to help them out of the trouble into which they had fallen in consequence of this evil of universal manhood suffrage, which had been thrust upon us without our consent and without our agency, and I said to them I am for making a constitution which will elevate the suffrage
36 and I am for eliminating from the right to vote all those who are unfit and unqualified, and if the rule strikes a white man as well as a negro, let him go. There are some white men who have no more right and no more business to vote than a negro, and not as much as some of them.

Now, it is true statesmanship not to legislate, especially in making a fundamental law, on account of the smarts and wrongs done us in our past history. That is not it. It is to deal with present conditions, whether they came by our commission or were thrust upon us that don't make any difference. You are considering to-day a constitution for the people hereafter, people who have to succeed us after my hairs have gone down to the grave, and after you and I sleep in mother earth. You—every man of you, are doing a work that, it is to be hoped, will be beneficial to those who succeed you. Now, to what shall we look? Shall we go back to the irritations of the past to guide us, or shall we look to our present surroundings and cast aside the things of the past which are not alive to-day? I have said about all I intended along this line.

Will we completely exclude the negro from participation—all participation—in the affairs of our State, or will we allow a reasonable number of them—the better element of them—to go to the polls and vote? In a people so large a minority of the population as they are—eight hundred thousand, and whites ten hundred thousand, eight hundred thousand out of eighteen hundred thousand—did you ever in all your reading know of a people and so large a minority as that, who were not allowed any voice at all in the affairs of government to remain contented under that government? Have you ever heard of so large a minority who have been admitted into the participation of the affairs of government for thirty years, who were afterwards silenced? Will not there be disturbances? Why, some of these people are becoming very intelligent, and acquiring property, and gentlemen, it may not occur next year, or

the year after, or five years hence, but, if you go along
37 with this, and practically none of them having any voice in our affairs, you may live to see the time of outbreaks and troubles not now contemplated, such as every man who participates in making it thus will live to regret. Let them occupy a subordinate position, but do not silence them. Let the better element of them, though of an inferior race, who have won the confidence of their neighbors, won respectability and acquired property—allow all of that class a fair show, and let them go to the polls and vote. There is no danger in that. Exclude the densely ignorant and corrupt. I do not stop at the exclusion of the negro, but exclude the whites of this class and deny them the right to vote also. The privilege of voting is not a natural right. Those ladies up there are citizens, and naturally have as much right to vote as I or you or any of us, but a voter is one who is selected on account of his supposed capacity for handling the ballot wisely and well. He handles it as a trustee. He votes for his wife and children, and for his neighbors who are denied the privilege. Take it on the basis of all males 21 years of age and upwards, it is about 5 to 1, and he is voting for four others as well as himself on that broad basis. I would not allow the ballot, if I had it in my power, to go into the hands of a vicious and notoriously corrupt white man any more than I would a negro, in fact, I would not trust him as quickly as I would a negro of intelligence and good character. You want that matter handled wisely and well for the best interest of the community. It is not a racial question. If you propose to make it a racial question, what would be the end? As some say, the extermination of the negro. Prepare him and then send him back to his native Africa? That is a doctrine that is advocated now, not only by some men but by some statesmen. Gentlemen, it is an utterly impracticable thing. In the aggregate, there are ten millions of these people in this country. They are citizens not only by our State laws, and our State constitution, but they are citizens by the Constitution of the United States, and it is so declared in that instrument.

They have the right to go when and where they please
38 as other citizens. The power don't rest with the Government to rob them of this right or to colonize them in any other country. Then there is the labor question. Why, as I sit in my door and look out, who is it that fixes all these telegraph and telephone poles on the street? I have never seen a white man on one of these poles. The negro performs nearly all the labor down here in this country, and isn't he better as a contented man than as a discontented one? Wouldn't it pay us to treat him right, and give him full protection under the law, and give him a voice in the affairs of State, and retain him here, rather than to engage in this impracticable scheme of a race conflict and his expulsion? We do not own any lands in Africa to which we can send them. Such land mostly belongs to European nations, and even if we had that power, and he were not a citizen, where are the vast sums of money to come from to take him over there and settle him? You would not take him

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over there to starve. You would have to support the whole colony for a time. Then what would you do for labor in the South? The climate invites them, and the occupation of our people invites them here, where we raise cotton the great staple product of this country. Here where we have been raised up among the negroes, nine-tenths of these delegates know that there is an attachment between them and the white people which I say ought not to be disturbed. My friend, the delegate from Greene, on yesterday told us how he was shot down on the battle-field of Chickamauga, how his faithful slave and serving man attended him, stopping to serve him when he could have gone off to the other side and been free. The negroes knew what that war was for. They knew that their freedom was involved. Yet, look at their conduct, in the main, all through the South. They remained at home and made corn and supplies to support our armies in the field, and throughout the length and breadth of the Confederacy there was not a single outrage perpetrated upon any man's family, or any woman or child, or helpless person, by these people, although they were slaves. President Lincoln called for 75,000
39 troops to serve for 90 days to put down the rebellion, and he expected these negro slaves here would rise in insurrection and apply torches to the homes of their masters. Sadly mistaken was he. There never was such an instance in the history of the world, as of this devotion of the slaves to their masters presented during that remarkable contest.

Fifty-fourth day.

MONTGOMERY, ALA., THURSDAY, *July* 25, 1901.

The convention met pursuant to adjournment, called to order by the president, and opened with prayer by Rev. Dr. A. L. Andrews.

Mr. HEFLIN (Chambers): Mr. President and gentlemen of the convention—I have enjoyed the earnestness of the gentleman who favored the minority report and I have the utmost respect for the ability and convictions of those gentlemen who have followed in the lead of the distinguished gentleman from Montgomery. This is a serious question that confronts us. This is a great battle that we are fighting and a great problem that we are to solve. The historians tell us that when Spain had pressed her conquest to the limits of the then unknown world, she stamped the pillow of Hercules upon her coins with a scroll around it, bearing the legend *Ne plus ultra*, No more beyond. But one day a bold and adventurous spirit sailed out far beyond and discovered a new world of transcendent beauty and riches, and the proud nation convinced of her mistake, cut the negative from her coin and left the words "*plus ultra*"—more beyond. Since man tasted the supernatural joys of Paradise, and lost that high estate, he has been wandering in search of an ideal country. It was this love of an ideal country that painted the Arcadia in the brain of the French philosopher. It was this same love of an ideal country, Mr. President, that inspired the pen of Sir

Thomas Moore to write his far-famed Utopia. It was this same love that thundered in the eloquence of Cicero and thrilled the heart of Plato. It was this same love that inspired the men of the imperial Cæsar to follow him beyond the Rubicon. It was this same love that fought the decisive battle of
40 Hastings. It was this same love that carried the torch of revolution through the iron storms of war, seeking liberty; it was this same love, Mr. President, that blowed on the canvas before the eye of Columbus and impelled him to brave dangers until he touched the shores of an ideal country to be, and uttered the pean of praise and song, the hymn of hope fulfilled. It was the same love that burned in the temple of the Pilgrim Fathers, and kindled the fires of revolution which no power on earth could extinguish until the Goddess of Liberty waved her sceptre over the land of the free and the home of the brave. It was here, Mr. President, that the Caucasian hewed out a republic, below whose temples and institutions will break harmless the billows of time, and it was here that the representatives of the proudest race that ever lived established a government that will never fall. It has here that the white man drove the red man from his home in the forest, and took possession of this land as we find in the Bible that God gave his servants command, to go up and possess the land. I verily believe he reserved America, this section of the Western world, for the permanent settlement of the Caucasion race, and here by mutual consent, they came together, and by mutual consent established a government for the good of all the people. In the course of time, gentlemen of the convention, the slaves were hunted out in Africa. The negro wandering through the woods like the beast of the field, and brought here to do what? Put upon the block and sold to the highest bidder to be the servant of his superior, the white man in this country. I believe as truly as I believe that I am standing here, that God Almighty intended the negro to be the servant of the white man. I believe that the Scripture will sustain my position on that question. I know he is inferior to the white man, and I believe that delegates of this convention believe him to be. He knows it himself. After remaining here the servant of the white man for years and years, finally upon a question of State rights, and not on the question of slavery, the greatest civil conflict in human history was enacted in our country. Great men
41 were arrayed upon opposing sides, and for four years the undaunted sons of the South illustrated to the world the bravest spirit that has ever throbbed beneath God Almighty's sun. Fighting for home rule, and fighting for self-government, and what occurred. They issued a proclamation the President of the United States, freeing the slaves of the South, taking from them that which they had bought and paid for with their own money, snatching from — this property that they had bought in the market, and which belonged to them, and that they of right, could not take from them by a stroke of a pen as they did. What else, Mr. President? This was a military blow at the labor system of the South. Later on they

said to this mass of ignorant slaves, untutored and uncultured, you may walk side by side with your master of yesterday and cast your vote and kill his will. Unfit for the responsibilities of government, they were turned loose upon the people of the South, and marched side by side with the chivalric sons of our country, up to the ark of the covenant, the ballot box in our land, and voted like the high-spirited, free-born Americans of our land, like the men who fought the battles of this country, the men who bought it with their blood and who with their arms bravely and undauntedly secured American independence.

I take the position, Mr. President, against the gentlemen of the minority of the committee, that the negro never had the right to vote. I take the position that the exercise of the suffrage was an inherent right with the white man and a privilege with the negro, granted by the white man. There is a distinction. We have it in our power to give him the privilege to vote if we see fit to do so, but as to the white man, it is his birth right in this country. The gentlemen of the minority make the mistake in reasoning from the stand-point of equality. It is true under the law of this State the negro must be equal with you in the exercise of the ballot, but we know as a matter of fact that he is not equal to us. God Almighty did not make him so, and the work of the artists of the minority report cannot improve on his handiwork. (Applause.)

42 Why, Mr. President, the striking from him of the title slave, and placing in his hands the ballot was the most diabolical piece of tyranny ever visited upon a proud though broken people. I believe, sir, that the tour of the President of the United States through the South has opened the eyes of the northern country on this proposition, and that they see today that they made a mistake when they gave the negro the right to vote. Mr. Lincoln said upon one occasion, "I do not favor now, and I never have favored giving the negro the franchise." Mr. President, it is a fact that the majority of the Northern States, outside of the New England States, voted against giving the negro the right to vote. Francus Preston Blair, in the United States Senate in 1871 said: "Missouri gave 31,000 majority against it, Kansas 15,000, Ohio 50,000, Michigan 34,000, New York, Connecticut and New Jersey and all the Northern States went against it except the New England States." He goes on further to say, Mr. President, that the representatives of the legislature and Senators and Congressmen violated the will of the people and carried through the 14th and 15th amendments. We see how it was brought about. Was it their desire to elevate the negro? Not at all. As I said before, the striking off of the shackles from his feet was a blow at the labor system of the South, and giving him the right to vote was a blow at the proud spirit of the men who had by the very force of their heroism killed more of the men in their army than we had men in all the armies of the Confederacy. Humiliated, stricken down, the men who wore the grey were the bravest that ever drew a battle blade. The bravest that ever crossed the field of carnage or shed blood in the cause of right, and when

time is over, when history shall finally be made up, I believe the historian will record the fact that the Confederate soldier was the bravest that ever lived in the annals of time, and yet, Mr. President, the gentlemen who favor the minority report tell us that it will humiliate a descendent of illustrious men who walk up to the ballot box and say I am a son of a Con-
43 federate soldier. Humiliate him? If it humiliates him he is not worthy to vote. He is not worthy to have any voice in any government on any question. The proudest title of the Romans was to smite himself upon the breast and say I am a Roman soldier. The proudest title that the young men of this day can wear, is to walk out and say I am the son of a Confederate soldier. Humiliate him, poor timid fellow, who has got to walk up to the ballot box and say I am a Confederate soldier's son. But they advance the argument that you want to give him an advantage over the negro in the race. No, that is not it gentlemen. The proposition that I am fighting is the one by which they undertake to put him upon the same level, and for him to march up side in the same column with the white man. If you want to make a foot race, let us make it with the descendants of our own tribe.

Mr. President, the only instance in history where a race which you might say was physically prohibited from amalgamating or assimilating with another race, was given equal rights and privileges by the law with that other race in that same community. You can't trace history back to a single recorded instance where two such opposite races were ever brought together under the same laws affecting both alike. There is nowhere a single recorded instance where Africans and Caucasian races, impossible of mutual absorption or amalgamation, were accorded the same political, legal and social rights under the same government.

Mr. President, we have told the people of Alabama for years that we wanted to disfranchise the negro. He has been about a ballot box like sheep in the market, for sale and traffic to the highest bidder. The white people who love the ballot, who love the sanctity of their fireside, who love the government of their homes and of their States, want to exercise that great weapon in the defence of things that are right and sacred. We want to take it out of the hands of men whom you can purchase for 25 cents and a drink of whiskey. We want the white men who once voted in this State and controlled it to vote again. We want to see that old condition restored. Upon that theory we took the stump in Alabama, having
44 pledged ourselves to the white people of Alabama, upon the platform that we would not disfranchise a single white man. Why did not gentlemen speak their views on this question before the sovereign authority of the State had sent them here. Why did they wait until they had gone beyond the border line. Why did they wait until they had securely enthroned themselves in the confidence of the voting masses of Alabama? But we are here confronted with this minority report. There is a division among us. All representatives of the same party, men who were elected upon

the same platform, and some gentlemen tell us that we ought not to violate our oath to support the Constitution of the United States, but I say, gentlemen, let us not violate our pledges to the people who sent us here.

Mr. President, it required more than a thousand years of education, to prepare the thoughtful Saxon and quick-witted Celt for the duties and responsibilities of American sovereignty, and yet the negro by a scratch of the pen and a partizan vote was prepared for it in the twinkling of an eye, turned loose as an enraged mob upon the proud people of Alabama who made its name the glorious thing it is. Before the white man saw that his right was infringed upon, when he saw the ballot appear in the hands of his own blood, he loved and respected it above any power in the civil laws under God Almighty's sun. Then it was kept pure. The negro did not vote. Nobody voted but the white man, and it reminds me of that story of the Vestal virgins, and the temple there in Rome, where the Vestal virgins kept the sacred fires burning forever, and the Roman consuls would gather there and offer up their sacrifices and prayers before entering upon the discharge of their duties to their country, but when the sacred fires went out, and profane fires burned upon the hearthstone, they felt that virtue had gone out of the temple, and they no longer worshipped there and made their offerings. They lost respect largely for the sacred temple, and Mr. President, when the white people of Alabama marched out on the occasions fixed by law to settle the great questions at the ballot box and walked elbow to elbow with their own brethren, it may be they were arrayed on opposite sides, they deposited their ballots, the result was counted out and they shook hands and all was well. Nobody but the proud Caucasian cast his vote, nobody but him dared to walk upon the sacred soil about the ballot box in that day and time, but when slavery was no more, when the slave was given the ballot, and when these great hordes marched to the ballot box, the proud spirit of the white man felt to a large extent that the virtue of the ballot had been removed, had flown, and he did not respect it as he did in the glad days that were gone. We want to see that glad time restored in Alabama, and it is going to be restored. The people hope that this convention will carry out the pledges that were made to the people and unless they do, the people will pass final judgment upon our work here and will not endorse our action. They tell us what the Supreme Court may say and do. I want to remind gentlemen what the supreme authority in Alabama will say and do if you do not obey its mandate. I do not believe that we are violating the Constitution of the United States, if so I am willing to trust my destiny along that line with the distinguished president of this convention and the chairman of the suffrage committee and the other distinguished gentlemen who made the able argument on yesterday, Mr. Walker from Madison, and the other gentlemen who have spoken on this question, and the able lawyers in this body. I am willing to take their decision in respect to its constitutionality for my part. I belong to

that class of young men that General Harrison referred to. I hope to God that I will always stick along the line that I have started on, of living up to the pledges that I make to my people. I have not grown beyond that yet. I want to live up to the pledges that I have made to them. We all must do that. They spoke of the young man back yonder who said that he could drink all the blood that would be spilled in the war, and whip the North with pop-guns. We have all heard that old story. We know those were bloody times, but I would remind them for a moment
of these of whom I speak when I speak of the Confederate
46 soldier and his descendants. I would remind the gentleman that it was a southern man who wrote the Declaration of Independence, that it was Washington who led the triumphant cause of American independence; that it was Madison who wrote the Constitution; that it was Marshall and Taney who constructed the law; that it was Winfield Scott and Jefferson Davis that carried our flag into the heritage of the Montezumas. I would say to them that it was these southern men that for four long years fought the battle of their country, and they could never have fought as they did at Gettysburg, perished as they did at Crampton's gap unless they had fought for the loved principle, and the descendants of these men you say will be humiliated and cast down when they approach the ballot box to register their will upon the public question, must be required to state themselves descendants of Confederate soldiers. Far be it from him. There will never be a single instance in this State of that sort. Not one.

Mr. PETTUS (Limestone): I move that the time of the gentleman from Chambers be extended twenty minutes.

The motion prevailed and the time was extended.

Mr. HEFLIN (Chambers): I thank the convention. I do not think that I will take up the time. Mr. President, we have here a peculiar state of affairs. Here we have a widowed woman, who owns possibly a hundred thousand dollars' worth of property. She is disfranchised. She cannot under our law vote in any election. You say that is taxation without representation. You argue that in defense of the negro and you say that you are not going to tax him without allowing him to vote, or to shut off his voice in public affairs, and yet there is this property which you are taxing to-day, the property of all the women in the State who have not husbands or sons old enough to vote, without representation.

Under our law, Mr. President, the Chinaman and the Indian cannot vote. Why discriminate against the children of the forests, the red man, who, by some means in the plan of God Almighty owned
this country before we found it? Why say to them that we
47 will shut them away from the ballot box, and say to the negro whom we found in Africa roaming the woods like a beast, brought here and sold as slaves, we will elevate you to the high plane of a citizen in Alabama, and arm you with the ballot, but say to the Indian you cannot vote; and as was said by the gentleman from Wilcox, (Mr. Jenkins) some of the proudest blood in

Alabama to-day is Indian blood. Some men in Alabama are proud of that blood. But we have said to the red man he cannot vote, but to the negro you may.

Mr. President, I love to think of how faithful they were during the war. The gentleman from Montgomery (Mr. Oates) spoke about how they protected our homes, and how they looked after our affairs. That, Mr. President, was the old time slave of over thirty years ago. That, Mr. President, was the negro that had been brought up in the kitchen, in the back yard, and brought up to reverence and respect his master. There was a spirit of fear that went about him; reverence for his superior and a feeling of humility and obedience on occasions like that was innate, and we are glad that they did so well. I am not an enemy to the negro. I am a friend to him in his place. My father owned more slaves than any man in Randolph county. I love the old time southern negro. He was in his place as a slave, and happy and contented as such; and, Mr. President, I love to think of the old black mammy, as Governor Taylor says: I believe the day will come when the South will erect a monument to the old black mammy for the lullabys she has sung. We like to think of all these things. We like to think of Ephriam sitting around the fire place picking his banjo and eating roasted potatoes, and "sich." We love to go back and bring them back to memory; but you take the young negro of to-day and put them in the same position that their fathers were in, and, gentlemen, a quarter of a century from now you would not be on a floor like this singing their praises. I tell you that the old negroes are passing out and the young bucks that are coming on have got to be attended to. I like to think of the negro from the old fashioned southern standpoint. I like to tell him you do this,
or you do that, John, and here is a quarter; you
48 black my shoes, or catch my horse, and you go do this and
that, and all is well; but when I have to walk up to him and say, John, come down off of that telegraph pole that Governor Oates spoke off on yesterday where he is setting telegraph wires through the city; come down, I want to talk to you about the tariff question, and sit down with him at my side, just light up our cigars and talk. We are equal in the light of the law and I have got to sit down by you and ask you to vote my way, not because you are my equal, for God Almighty never made you so, but because under the operation of the law that was born in hate and malice makes it so; and under it you are entitled to hear me and be persuaded by me to vote for me, or to vote against me. Is not that a sad state of affairs? Why, Mr. President, I saw this morning a little fellow coming down the street, met by my friend, Mr. Weatherley from Jefferson and the negro was as happy as could be, with a piece of watermelon in one hand, and a set of cane quills from the swamp tied together with a string in the other, blowing goo goo eyes. You see them now and then in a blacksmith shop with squeaking bellows, and with the hammer and anvil making music sweet. That is his home, that is where he ought to be, and that is where he must be. For five thou-

sand years, Mr. President, they have remained the same. Go back to the carvings of Egypt and see their images there; look at the negro of to-day; he is a negro still, having made but little progress. All things that we see standing accomplished in the world to-day are properly the outer material results, the practical realization and embodiment of thought that dwelt in the white men sent into the world.

A man goes out and buys a section of land, or inherits it from his father and in the midst of the place he has built a magnificent home and there he rears his family, and the negro comes along through the country and builds himself a little house out in the woods and becomes the servant of the white man and looks after his horses, and stands at the door with his hat off and asks, "Boss, do you want your shoes shined." And all is well. He stays in the kitchen where he belongs. Finally, however, we see that
49 man telling this negro you are too good a man to be out there; come in by the fireside, and let us counsel together as to how I shall run my property. Mr. President, it is the same case. The white man bought this country with his blood, and the blood of his descendants inherit it, and the negro has no right to help make the laws that govern this country. He is inferior to the white man, and the white man should make the laws to govern the land. They say we do not hold out any encouragement to him. He does not need encouragement, let him go on and it won't be two years until he will be content with his condition and happier by far than he is to-day. Why, as soon as you elevate him, you ruin him. Mr. President, I take the position that it is best for the negro race. Take the lives of the hundreds that are killed every year at the ballot box. They will be saved when they cross the path of the proud Caucasian. It will be better for them. They will prosper more.

Now, sir, I have not the time to say what I would like to say, neither has this convention the patience to hear me. One other word and I am through. Why, gentlemen tell us that the son of the Confederate soldier should not be allowed to vote, but he should work out his salvation as his father did. Do not let him by reason of his father's valor, and sacrifices for his country, cast his vote. I cite the gentlemen to the Scripture. It is found in Deuteronomy, "And it shall be when the Lord thy God shall have brought thee into the land which he swore unto thy fathers, Abraham, Isaac and Jacob, to give thee great and goodly cities, which thou buildest not, and houses full of good things which thou fillest not, and wells to dig which thou diggest not, and vineyards and olive trees which thou plantest not." It is the inheritance, Mr. President, that we are asking for the sons of the Confederate soldiers, those who supported their widowed mothers and schooled their sisters, that brought them up and were themselves denied an education. We throw around them the strong arm of the law, and take them with us as we march up the mountain side, to a higher and better clime, a higher and better civilization.

50 Mr. President, so far as I am concerned, I am opposed to the disfranchisement of any white man. I care not whether he is learned or unlearned, whether he wears the purple robes of good fortune, or the tattered garments of poverty and want. I care not whether he is in a little hut on the hill side or dweels in a mansion on the mountain top; he is a descendant of those who fought for our freedom, and men who have gained the priceless heritage which we love so well and will die to maintain.

In conclusion, I want to say to the gentlemen who compose the minority of the committee: You will live to see that we are right, and that you are wrong, and the people of Alabama whom we represent here to-day in this supreme body will endorse our action and repudiate yours. I thank the convention for their attention.

Fifty-fifth day.

MONTGOMERY, ALA., FRIDAY, *July* 6, 1901.

The convention met pursuant to adjournment, called to order by the president, and opened with prayer by Rev. A. L. Andrews.

The chair recognized the gentleman from Calhoun (Mr. Knox).

Mr. SAMFORD (Pike): I have observed, Mr. President, that in extending the time of speakers on this question so far, that we have had to interrupt them in the midst of their argument, and I therefore move that the rules be suspended, before the argument begins, and that the gentleman's time be extended until he can complete his remarks.

Upon a vote being taken the motion was carried.

Mr. PRESIDENT AND GENTLEMEN OF THE CONVENTION: The sudden enfranchisement of a large mass of ignorant voters, just emerged from slavery, by the adoption of the 15th amendment, has been recognized almost everywhere as the mistake of the 19th century. The consequent evils that we have suffered, in common with other States, need not be dwelt upon. They go to make the history
51 of reconstruction in the South, and represent the darkest days through which our people have ever, and I trust will ever be called upon to pass.

The practical question, Mr. President, is what can we do, within the limits imposed by the Federal Constitution, to ameliorate the unfortunate conditions which the creation of an ignorant, vicious and incompetent electorate has brought upon us. That the southern man is sceptical as to the ability of the negro to become a good citizen and to exercise the responsibilities of citizenship in a manner which would justify their extension to him, is scarcely to be wondered at, when we remember that Mr. Lincoln, the negroes' greatest and truest friend, held similar views himself. In his speech at Charlestown, Ill. on Sept. 18, 1858, Mr. Lincoln said:

"I will say that I am not and never have been, in favor of bringing about in any way the social and political equality of the white and black races—that I am not, nor ever have been, in favor of

making voters or jurors of negroes, nor of qualifying them to hold office, nor to intermarry with white people; and I will say, in addition to this, that there is a physical difference between the white and black races which I believe will ever forbid the two races living together on terms of social and political equality. And inasmuch as they cannot so live, while they remain together there must be a position of superior and inferior, and I, as much as any other man, am in favor of having the superior position assigned to the white race."

(1 Complete Works, 369.)

While we regret, Mr. President, that in the suffrage plan we have not the support of either of our Senators, we remember that those who battled with these difficulties in Louisiana and North Carolina were in a like condition. They, too, had the opposition of both of their Senators, but they were not deterred on that account from establishing constitutional reform, and saving the State from the domination of the ignorant and vicious element. But no great reform movement like this has ever been accomplished except by beating down obstacles which confronted on every hand. If
52 we are right, as I believe we are, let us stand by our guns, no matter how virile the criticism or how prominent the objectors.

Fifty-eighth day.

MONTGOMERY, ALA., TUESDAY, *July* 30, 1901.

The convention met pursuant to adjournment, called to order by the president, and opened with prayer by Rev. Marshall.

Mr. COLEMAN (Greene): Mr. President, the hour is approaching at which we will be required to take a vote according to the resolution which has been adopted by this convention. There are several gentlemen who desire to place themselves upon record upon this question. I move that the rules be suspended (expressions of dissent).

The PRESIDENT: The gentleman from Greene will proceed to state his motion.

Mr. COLEMAN: I move that the rules be suspended, and that the vote be taken at 1 o'clock to-day, and that speakers be limited in their speeches from now until that time to not exceeding ten minutes.

Mr. PILLANS: That requires a suspension of the rules, Mr. President.

The PRESIDENT: The question will be first upon the motion to suspend the rules.

A vote being taken the convention refused to suspend the rules.

Mr. COLEMAN: I regret very much that a number of persons have not had an opportunity to express themselves upon this great question, so that the members of this convention from other portions of the State might have an opportunity to know the

sentiments of the people whom they represent. As the rule requires that the vote shall be taken at 12.30 I propose in the meantime to exercise the right, and that which is expected of me, to consume the next 10 or 15 minutes. I do not expect the delegates of this convention to fortify the legal propositions which have been stated before you, which have been discussed with so much ability, and which it seems to me, to any unbiased mind, have been conclusively established. I propose, however, in this short time, which I have, in my own
53 common sense, and commonplace way to supply some material for argument, if it should be required in the discussion before the people, upon the ratification of this constitution. While the illustration of the gentleman from Jefferson was homely and perhaps beneath the dignity of the subject, inasmuch as it has been commented upon more than once in this convention, and carries upon its face that which would deceive or mislead, I will use his homely illustration by way of defining what I understand to be met by the phrase "You cannot deny or abridge the right of suffrage to any citizen because of his race, color or previous condition." Now, if the delegate will remember, the homely illustration is that of the sow and pigs, making a crack by which the pigs could escape, and the sow would be confined, and he asks you if that is not a discrimination. Of course it was, but the vice of the gentleman's argument was this: He did not state the whole case. The question is, Why was the sow confined in the pen, and why were the pigs permitted to run at large? If the sow was confined there because she was a sow, it was a discrimination on account of her race, but if the sow was confined there on account of her vicious habits, it was a discrimination on account of her habits and not on account of her race. The proposition presupposes that there was somebody in control of the sow, and I venture to assert that if you will go to the owner and ask him the question, "Why did you confine her in that pen?" he will tell you that it was because of her predatory habits, that she visited the poultry yard, or got into the melon patch, and they were compelled to confine her in the pen. That is a simple illustration of the law. That is what is meant by denying or abridging the right to vote on account of race, color or previous condition. But it makes no difference whether she was a black razor-back or a red sow. I intended to elaborate these questions somewhat at length, but the gentleman cited from Stringfellow *vs.* Ivey case to show you the danger that when an improper consideration was framed in a law, that the whole might be stricken down, and he was even more unfortunate in his illustration. The case of Stringfellow *vs.* Ivey, was this: When a man sells lands,
54 he has a lien upon that land for unpaid purchase money. But no lien upon personal property for the unpaid purchase money. Mr. Stringfellow purchased from Mr. Ivey a piece of land and agreed to pay him so much money and a stock of goods in a lump sum. Now, it not being paid, a bill was filed to enforce the vendor's lien. The court held that the lien could not be enforced,

because the consideration consisted of land and personal property. There had been no agreement as to the value of the land, and the value of the personal property. And, therefore, the court could not tell how much was due for the land and how much was due for the personal property, but the court held, and they have always held, that even though the consideration consisted of a sum of one note *had* specified how much was to be paid for the land and how much was to be paid for the personal property, the court would have upheld that which was for the land and discarded which was for the personal property. I mention this to show you that in the writing of this section under consideration, we have carefully guarded against every legal danger of having the law stricken down. I desire to simply call your attention to the law upon this subject. When part of a statute is unconstitutional, the statute remains as complete within itself, and capable of being executed in accordance with the apparent legislative intent, wholly in accord with that which is rejected, it must be sustained. (65 Ala.) Now, those gentlemen admit that the understanding clause, as we will designate it, is constitutional. They admit that the soldier clause is constitutional. This proposition says that if that be true that even though you strike out the descendant clause, the whole of the remaining fabric would stand and be sustained by the courts. I do not make this argument because of any apprehension that any part is unconstitutional, but simply to show you the falsity of the argument they have presented. There is not a proposition adduced here to sustain them. They have been overthrown by argument, and even upon these simple propositions they relied on so much, there is not a decision or principle of law that sustains them. I will read you only one more line, and that is upon what courts have declared to be the law when you deny the right of suffrage upon the ground
55 of race, color or previous condition. I say it is one which may be exercised to the full limit if the abridgment is made not upon the point but upon the point of characteristics of the parties excluded. Here is the case: 170 U. S.—the last opinion upon this subject. This is the Mississippi case. The court says: "Restrained by the Federal Constitution from discriminating against the negro race (that is the Mississippi convention) discriminates against its characteristics, and the offenses to which its criminal members are prone. No exception is made to it. "But nothing tangible can be adduced from this," says the court. If weakness were to be taken advantage of, it was to be done "within the field of permissible action under the limitations imposed by the Federal Constitution." Can anything be plainer than that? "And the means of it were the alleged characteristics of the negro race, not the administration of the law by officers of the State." I do not see, delegates, what may be said in addition to what has been said. The whole argument that the Constitution is in danger if any part of it should be declared null and void, is without support either by authority or reason. When you say you put a standard to which the negro cannot attain, and our legislation is confined to his char-

acteristics—and it is certainly confined there—the very latest exposition of the Supreme Court of the United States sustains us in that position. That the gentlemen has cried "fraud." I will ask him to rise in his seat if he is here, and tell me what court, and at what time a court has ever declared a statute to be void on account of fraud, much less the organic law of a State. Fraud enters into transactions between parties, but you heard the principle discusses here time and again in regard to the Shelby County case. They had no relief, because the statute could not be attacked as fraudulent and by your vote that proposition was sustained, and I assure the delegates of the convention, as a proposition of law, is sound. The apparition that they are trying to draw up here melts away in air when it is exposed to the light of the decisions and principles of law so long established in this country. I do not know what to
56 say, gentlemen. The honorable delegate from Jefferson county has told *told* you that he was one who took a solemn oath before high Heaven that the white man should rule, and we have heard the delegate from Montgomery county complain that the act- of the Ku Klux were not sufficient to satisfy him, and that he time and again in order that the elections might be carried, even by fraud, encouraged the managers. And yet an officer upon whom high honors were conferred and he time and again—and I class my friend sitting there in the same category (applause) whose consciences are disturbed by the provision that we must support the Constitution of the United States, and, therefore, they cannot see their way clear to vote for the report of the committee. I have read, and I don't say it with any purpose of disparagement, of a certain class of people of whom it was said that they would "strain at a gnat, but swallow a camel." I do not know what more could be said to convince these men. We do know that on a certain occasion, a man was found in a very hot place, and he desired that he might be sent back to earth that he had five brethren there to tell of the place. But he was told that if they did not believe what they had heard, they would not believe though one came back from the dead. (Applause.) The good book tells us there were five brethren, I wish there were only five here; but I can count four of the minority report, and I can count my friend over there on the same side is the delegate from St. Clair county, who, in this convention, said that one of the brightest stars in the crown was the 15th amendment. I do not know how they would like that kind of company. (Applause.) I was shocked to hear a man claiming pride in being a white man, to say that he regarded the 15th amendment as one of the brightest jewels in the crown, or one of the brightest something that is pinned to the Constitution—I don't remember exactly the language exactly now. After hearing him say that, fellow delegates, I was not surprises to hear him afterwards say that he feared neither man, hell nor the devil. If there was no other reason for calling this convention here, and no other reason
57 for ratifying this constitution, it would be sufficient for me to work for it in order that so many of his constituents

might be eliminated from the suffrage plank as to retire the gentleman entertaining those sentiments. And I hope those living in that community will preserve the record of the man who could endorse the 15th amendment in Alabama in view of all that we have gone through. I will not express my opinion of him. (Applause.) Mr. President, I believe as strongly as that I stand here, not only the fraud, the violence, the bloodshed, but I believe not one of our fair women have ever been assaulted in this land, but that the infamous act may be traced to the 15th amendment, and I feel shocked as I remember that only a few weeks ago a fair young lady in the gentleman's own country was the victim of an assault from one of these black fiends. That is my opinion of one of the effects of the 15th amendment. I wish that I had time. The gentleman from Pike sitting over there, had his speech read here, in which he stated that Senator Morgan and Senator Pettus held that this provision was unconstitutional. I say that he cannot find one line in anything that they have said, or written that sustains him in that proposition. On the contrary, it has been expressly admitted by one that it was constitutional in a public speech, and he has never retracted it. I take this occasion to say to this convention, that no longer than yesterday the senior Senator, Gen. Pettus, told me out of his own mouth that "When you mey I did not see how you were going to keep the Democratic pledge and not violate the Constitution" but he says "I assure you that you have performed the difficult task." And he told me, Mr. President if it was necessary, he would not only support this clause that we have under consideration now, but if necessary he would go into the country upon it. I wish to read a short estract from a letter of Senator Morgan. The gentleman who has the letter is within the hall of this convention, but has not had the opportunity to address you. "The counting of the electoral votes of Louisiana and Mississippi is a silent admission of immense value with reference to the power of the States to regulate the negro
58 vote." Think of that! Mississippi and Louisiana have already been counted—and that was the last we have heard from Senator Morgan.

STATE OF ALABAMA, }
Montgomery County. }

Before me the undersigned authority in and for said county, on this day personally appeared Wilford H. Smith, who makes affidavit that he is the attorney engaged in the preparation of the case upon application for mandamus of Jackson W. Giles against the Board of Registrars of Montgomery County, and that the foregoing 12 pages of printed matter pasted together on paper, are portions of the speeches and debates that were delivered in the constitutional convention of Alabama, which was in session during the month of July 1901, in the city of Montgomery, and that the portions so pasted together on the foregoing pages were taken from the official report of the proceedings of the convention, found in the archives of

the State in the capitol in Montgomery. He further makes affidavit that the foregoing two pages of type written matter purporting to be the speech of acceptance of the Hon. Jno. B. Knox as the president of the constitutional convention, *was* copied by him from the journal of said convention, which journal was prepared and published by order of the secretary of Alabama, and was found among the public records in the capitol at Montgomery.

WILFORD H. SMITH.

Sworn to and subscribed before me this 1st day of July 1902.

JOHN A. ELMORE,
U. S. Commissioner.

[SEAL.]

59 *Affidavit No.* 1.

The Advertiser.

Tuesday, June 24, 1902.

Few negroes registered. Only 36 get certificates in Lowndes. 975 whites on the list. Blacks do not come up to requirements, as a rule.

Charge that they are being given certificates indiscriminately is shown to be untrue. In other counties.

By D. W. McIver.

Fort Deposit, June 23 (staff correspondence).

The rumor has gone abroad that negroes were being registered in Lowndes county generally and indiscriminately. The report came to the Advertiser from a prominent citizen of the State who wrote:

"I am in receipt of a letter from a prominent Republican in Alabama advising me that the negroes are being registered in Lowndes county in large numbers. I hardly think it true, and yet the gentleman who writes me thinks his information is authoritative. Have it investigated."

The board of registrars of Lowndes county is composed of three of the best and most trustworthy citizens of the county, viz: S. L. Tyson, Fort Deposit; Geo. E. Gordon, Hayneville; J. A. Coleman, Mount Willing.

Mr. Tyson is the chairman of the board, and he very courteously stated that the board had completed its work until after the election, and cheerfully made the following statement:

FORT DEPOSIT, *June* 23, 1902.

I hereby certify that after giving legal notice, the board of registrars of Lowndes county have spent one day in each beat, except

the two large beats, Fort Deposit and Sandy Ridge, where two days were given, and that we have registered 975 whites, and 36 negroes, each and every one of whom are qualified electors under the constitution of 1901. The work has been completed until the final round after the election in November.

S. L. TYSON,
Chairman of Board of Registrars.

This sets at rest the rumors as to the work of the registrars in this county, for having completed their labors, they have placed on the registration books 975 whites and 36 negroes. Mr. Tyson says that the board registered the negroes who answered the
60 questions propounded to them satisfactorily, and who gave evidence of sufficient intelligence to properly exercise the right of suffrage. The board in this county has been diligent and earnest in its efforts to do its full duty conscientiously and impartially, and that it has succeeded in doing so is the verdict of the people of the county.

Other counties.

From statements in the Advertiser in the past few days it appears that in Dallas county there have been registered 1,878, of which 47 are negroes.

In Marengo county there have been registered 1,567 whites and 306 negroes, and this will probably be the largest number of negroes registered in any one county in the State.

In Autauga county there have been registered 1,416 of which 37 are negroes.

And from information at hand, the registration of negroes in Russell, Macon, Bullock, Barbour, Perry and Wilcox has been in about the same proportion as in these counties in which the figures are given above. The negroes are not being registered except where they come up to the full requirements of the organic law, and these are not very numerous in any of the counties, being less than 20% of the whole in Marengo, and not really one per cent. of the whole in the aggregate.

Not a negro registered.

In Crenshaw 2,467 white men have received life certificates.

Luverne, June 23. (Special.)

The registrars for Crenshaw county are now making their last round, and have registered 2,467 white voters, no negro having secured a certificate.

Opelika, June 3. (Special.)

The Lee county registrars are busily engaged in registering the voters. They have finished in eight of the 14 precincts of the county, and so far not a single negro has been found to possess the

qualifications necessary to entitle him to a vote. About the usual white vote is registering.

61 Montgomery registration.

The board has nearly completed its rounds.

The board of registrars of Montgomery county have nearly completed their first registration before August, but have not as yet closed their books. Not 30 negroes have been registered in the county.

The voters are pleased.

New constitution is popular in St. Clair county.

Ashville, June 23. (Special.)

The registrars from St. Clair county have completed their business except a two days' sitting in Ashville in July. The total number registered is 2,380, 23 of whom are negroes. There will probably be as many as 150 more who will register. St. Clair county's vote will be cut down about 700. The people are well pleased with the new constitution, as they are now convinced that all the white men can vote.

The Advertiser.

Saturday, May 3, 1902.

Effort to register negroes.

The Dallas County registrars are now in the Fork. They expect to be in West Dallas next week, where, it is reported, an effort will be made to register negroes in several beats. The registrars can be depended on to do their duty, and it matters not what kind of pressure is brought to bear on them, they are going to register only those negroes who can comply with the requirements of the new constitution. It is said that the strongest pressure to register the negroes will be brought to bear on the registrars in Browns, Brown's and Pierce's beats. The number of negroes so far registered in Dallas is below 30 and it will be below 50 when they have finished their work August 1st.

62 The Advertiser.

Saturday, April 26, 1902.

Marengo registration.

A report has been published in a Birmingham paper that a great many negroes in Marengo county were being registered. This report has caused somewhat of a flutter in the black belt, as it was generally understood that the spirit of the new constitution would

be carried out and the negro barred from participating in the future government of this State. Your representative saw a prominent citizen of Marengo in the city to-day, and asked him whether the report was correct. He promptly replied: "It is not. Marengo county is going to go hand in hand with the other black belt counties and will only *register those negroes* who can come up to the requirements of the new constitution in reference to the franchise. Demopolis beat now has about 1,500 negro voters, and, as you know, there are several thousand negroes who have heretofore been entitled to vote, living out on the big plantations, but they will not be registered. Marengo may have about 150 negroes, out of its large colored population who will be given the right to vote by having a registration certificate issued to them, but the people of the State need have no fear that there will be anything like a wholesale registration of the blacks, as the dispatch from Demopolis in the Birmingham paper would indicate."

If your correspondent's informant is correct, this will be very gratifying news to the people of Alabama. In Dallas and elsewhere throughout the black belt very few negroes have been registered. The number who have been given certificates in Dallas county is still below forty, and it is not likely to go a great deal higher. It is thought when the registrars first started out that the number of negroes who would be entitled to certificates from Dallas would reach 125, and possibly 150. But it is not believed now that the number will reach half of the former figure.

The Advertiser.

Friday, March 28, 1902.

Day devoted to negroes. Nearly 100 applied to registrars, but only 17 got certificates.

63 Anniston, March 27. (Special.)

Yesterday was set apart by the county registrars for registering negro voters. Nearly 100 applied but only 17 of the number were given certificates. Up to date 1,705 men have registered, and only 29 of the number are negroes.

The Morgan registrars.

So far 3,640 whites and 35 negroes have certificates.

Decatur, May 5. (Special.)

The county registrars have just completed their first round in the registration of voters in the county, and gave out the following figures: Total number of white men registered in the county 3,640; negroes 35.

Later on the board of election registrars will meet at the county court house here for the purpose of registering those entitled to regis-

tration, but who were unable to register heretofore on account of nonage, absence from home etc. The dates of registration at the county court house will be as follows: One week in June, two days prior to the November election, third week in November, and six days before the 20th Dec'r.

H. H. Cashin, the well known negro politician and receiver of public monies of United States land office at Huntsville, was here to-day and said that a vigorous fight would be made against the new constitution by the negroes of Alabama. He stated that the constitutionality of the State constitution would be tested, and that the case would be taken up to the United States Supreme Court if necessary. He intimated that the board of county registrars had violated oath *af* office in refusing to register certain ex-soldiers of the civil war.

THE STATE OF ALABAMA, }
Montgomery County. }

Before me the undersigned authority in and for said county, on this day personally appeared Wilford H. Smith, who makes affidavit that he is the attorney in the preparation of the case upon application for mandamus, of Jackson W. Giles against The Board of Registrars of Montgomery County, and that the foregoing page and a half of printed matter pasted together are articles clipped and taken from the Montgomery Advertiser, a daily newspaper
64 published at Montgomery, Alabama, which represents the sentiments and opinions of the ruling class in the State of Alabama, and is the official organ of the party in power in said State.

WILFORD H. SMITH.

Sworn to and subscribed before me this 1st day of July 1902.

[SEAL.] JOHN A. ELMORE,
U. S. Commissioner.

Affidavit No. 2.

The Advertiser.

Sunday, June 29, 1902.

Urged to register.

Board of registers working in the city.

Two thousand white men in Montgomery have failed to qualify.

Books will be kept open fifteen days.

The members of the board of registrars of Montgomery county announced yesterday that they would reserve fifteen days at the court house for the accommodation of the voters of the county.

They express the hope that during this time the two thousand white voters of the county who have thus far failed to registrar will do so and thereby enable themselves to vote in the forthcoming State elections.

The board has completed its round of country beats and will be in beats 4, 5, and 6 of Montgomery on Monday, Tuesday and Wednesday in the order named. After Wednesday the board will be at the county court house for fifteen days, when the registration will close.

Montgomery Co. has five thousand five hundred white voters. Thus far only 3,200 of them have registered. Of this number 1,000 voters have registered and 2,200 voters in Montgomery have registered. There are still 2,000 white voters in the city and county who have neglected this important duty, and the members of the board of registrars are hopeful that the indifferent electors will come forward within the next two weeks and attend to this important duty.

A member of the board of registrars said yesterday that it should be impressed upon white voters that they are not to be asked embarrassing questions when they apply for registration, and that the members of the board are anxious to issue certificates to the white voters of the county.

65 STATE OF ALABAMA, }
Montgomery County. }

Before me, the undersigned authority, in and for said county, on this day personally appeared Wilford H. Smith, who makes affidavit, that he is the attorney engaged in the preparation of the case, upon application for a mandamus, of Jackson W. Giles, against The Board of Registrars of Montgomery County, and that the above foregoing printed matter pasted on this page was clipped from the Montgomery Advertiser, a daily newspaper, published in the city of Montgomery, on the date as shown in the above article, and that said newspaper is the official organ and mouth piece of the board of registrars of Montgomery county, as well as the party in power, and the ruling class in the State of Alabama.

WILFORD H. SMITH.

Sworn to and subscribed before me this 1st day of July 1902.

[SEAL.]

JOHN A. ELMORE,
U. S. Commissioner.

Affidavit No. 3.

STATE OF ALABAMA, }
Montgomery County. }

Before me the undersigned authority in and for said county, on this day personally appeared Jackson W. Giles, who makes affidavit that he is 43 years old, and is a person of dark complexion, and of

African descent, known as a negro, and that he is at present employed as janitor of the U. S. Government building in the city of Montgomery; that he was born in the State of Alabama, and has lived therein for more than thirty years, that he has resided in the county of Montgomery more than thirty years, and in precinct No. 4 of said county more than two years next before the time when he applied for registration as herein set forth; that he has never been convicted of any offence whatever, is a person of good character, and understand the duties and obligations of citizenship under a republican form of government; that heretofore, he has enjoyed all the rights
66 and exercised all the privileges of a citizen of the United States and of the State of Alabama, until the 13th day of March 1902, when he applied to the board of registrars of Montgomery county for registration as an elector of said State, while said board was in session at the court house in the city of Montgomery, and open for the registration of the qualified electors of said county, and complied with all the reasonable rules of said board, and was by them refused and denied registration, upon no other reason than his race and color; and that large numbers of colored persons were also refused and denied registration at the same time, and since for no other reason than their race and color, although possessing all the legal and necessary qualifications, and said board required affiant to furnish the testimony of two white persons as to his qualifications and character, and refused to accept the testimony of any colored person, while no such requirement was asked of any white person, and all white men were registered upon their application and oath without further proof of qualifications, but all colored persons had to furnish the testimony of two white persons; in this way large numbers of colored persons were denied registration solely on the ground of their race and color, and he estimates the number disqualified in Montgomery county at about five thousand. Affiant says that the juries in the trial courts of Montgomery county are composed exclusively of persons of the white race, although the colored people are in the majority of said county, and that all colored persons are excluded from service on any of the juries in the State courts of said county for no other reason than their race and color, although otherwise qualified, and have been so excluded for a great many years, and affiant is informed and believes that all negores are likewise excluded from jury service in all the State courts throughout the State of Alabama.

JACKSON W. GILES.

Sworn to and subscribed before me this 24th day of June, 1902.

[SEAL.]

J. A. ELMORE,
U. S. Commissioner.

67 *Affidavit No. 4.*

STATE OF ALABAMA, }
Montgomery County. }

Before me the undersigned authority, in and for said county, on this day personally appeared James L. Jeter, who makes affidavit that he is 31 years old, was born in the State of Alabama, and has lived therein all his life; that he has resided in Montgomery county more than ten years, and in precinct — of said county more than two years next before the date of this affidavit; that he has never been convicted of any offense whatever, is a person of good character, and understands the duties and obligations of citizenship under a republican form of government; that he is a person of dark complexion and of African descent known as a negro; that heretofore, he has enjoyed all the rights and exercised all the privileges of a citizen of the United States and of the State of Alabama, until the 25th day of March 1902, when he applied to the board of registrars of Montgomery county for registration as an elector of said State while said board was in session at the court house in the city of Montgomery, and signed the proper blank application provided by said registrars, and complied with all the reasonable rules of said board, and was by then refused and denied registration, for no other reason than his race and color, and said board required him to bring two white men to testify to his character and qualifications, and refused to accept the testimony of any colored person and that affiant procured testimony of two white men before said board as to his qualifications and character but said board still refused to register him and grant him a certificate, for no other reason than his race and color, while all white men applying to said board were registered without any question or hindrance whatever, and without being required to furnish any evidence of qualification and character, except their own oaths, and that all negroes applying to said board were required to furnish testimony of two white men, and said board would not accept the testimony of any colored person; affiant says

68 that large numbers of negroes applying for registration at that time, and since were refused registration for no other reason than their race and color, and he estimates the number of negroes thus disfranchised in Montgomery county at about 5,000; affiant further says that in the trial courts of Montgomery county, the juries are composed exclusively of persons of the white race, although the colored people are largely in the majority in said county, and that all colored persons are excluded from service on any juries in any of the State courts of said county for no other reason than their race and color, although otherwise qualified, and have been so excluded for a great many years; and affiant is informed and believes that negroes are likewise excluded from jury service in all the State courts throughout the State of Alabama.

JAMES L. JETER.

Sworn to and subscribed before me this 24th day of June 1902.

J. A. ELMORE,
U. S. Commissioner.

Affidavit No. 5.

STATE OF ALABAMA, }
Montgomery County. }

Before me, the undersigned authority, in and for said county, on this day personally appeared Kinchin Harris, who makes affidavit that he is 42 years old, is a person of dark complexion and of African descent known as a negro, and that he was born in the State of Alabama, and has resided in the county of Montgomery 16 years, and the same length of time in precinct No. 4 of said county next before the date he applied for registration as herein set forth; that he has never been convicted of any offence whatever, is a person of good character, and understands the duties and obligations of citizenship under a republican form of government; that heretofore he has enjoyed all the rights and exercised all the privileges of a citizen of the United States and of the State of Alabama, until the 25th day of March, 1902, when he applied to the board of registrars of Montgomery county for registration as an elector of said State,
69 while said board was in session at the court house in the city of Montgomery, and open for the registration of the qualified electors of said county, and complied with all the reasonable rules of said board, and was by them refused and denied registration for no other reason than his race and color and that large numbers of colored persons were refused and denied registration at the same time, and since, for no other reason than their race and color, although possessing all the legal and necessary qualifications, and the said board required affiant to furnish the testimony of two white persons as to his qualifications and character, and refused to accept the testimony of any colored person, while all white men were registered upon their application without any evidence or proof of qualifications except the oath of the applicant, and all colored persons were required to produce two white persons to testify to their qualifications and character; and that large numbers of negroes were thus denied and refused registration, the number of whom in Montgomery county alone, he estimates at five thousand; affiant says that the juries in the trial courts of Montgomery county are composed exclusively of persons of the white race, although the colored people are in the majority in said county, and that all colored persons are excluded from service on any of the juries in the State courts of said county for no other reason than their race and color, although otherwise qualified, and have been so excluded for a great many years; and affiant is informed and believes, that all negroes are likewise excluded from jury service in all the State courts throughout the State of Alabama.

KINCHIN HARRIS.

Sworn to and subscribed before me this 24th day of June 1902.

[SEAL.]

J. A. ELMORE,
U. S. Commissioner.

Affidavit No. 6.

STATE OF ALABAMA, }
Montgomery County. }

Before me the undersigned authority, in and for said county, on this day personally appeared Nelson Bibb, who makes affi-
70 davit that he is 64 years of age, and is a person of dark complexion and of African descent known as a negro, that he was born in the State of Alabama, and has lived therein all his life, that he has resided in the county of Montgomery and in precinct No. 2 of the same, for more than ten years next before the time when he applied for registration as herein set forth; that he has never been convicted of any offense whatever, is of good character, and understands the duties and obligations of citizenship under a republican form of government; that heretofore, he has enjoyed all the rights and exercised all the privileges of a citizen of the United States and of the State of Alabama, until the 9th day of April, 1902, when he applied to the board of registrars of Montgomery county while they were in session at the court house open for the registration of the qualified electors of said county, for registration as an elector of said State and complied with all the reasonable rules of said board, and was by them refused and denied registration for no other reason than his race and color; and said board required affiant to furnish the testimony of two white persons as to his qualifications and character, and refused to accept the testimony of any colored person, while all white men applying to said board for registration were registered upon their affidavit of qualification without further evidence; that all colored persons were required to produce the testimony of two white persons, which is not an easy thing to do owing to the race prejudice existing against the colored race in the State of Alabama upon matters connected with politics; that large numbers of colored persons were denied and refused registration solely on the ground of their race and color, the number of whom he estimates at about 5,000. Affiant says that the juries in the trial courts of the county of Montgomery are composed exclusively of persons of the white race, although the colored people largely outnumber the whites in said county, and all colored persons are excluded from service on the juries in any of the State courts of said county, on account of their race and color, although otherwise qualified and have been so excluded for a great many years; and that affiant is informed and believes that all negroes are likewise excluded from jury service in all the State courts throughout the State of Alabama.

71

NELSON BIBB.

Sworn to and subscribed before me this 24th day of June, 1902.

J. A. ELMORE,
U. S. Commissioner.

[SEAL.]

Affidavit No. 7.

STATE OF ALABAMA, }
Montgomery County. }

Before me, the undersigned authority, in and for said county, on this day personally appeared Edward M. Dale, who makes affidavit that he is 44 years of age, is a person of dark complexion, and of African descent known as a negro; that he is employed as a clerk in the U. S. post office in the city of Montgomery, that he was born in the State of Alabama, and has lived therein all his life, that he is a resident of Montgomery county, and has been such resident more than 30 years, and has presided in precinct No. 4 of said county for more than four years next before the time he applied for registration as herein set forth; that he has never been convicted of any offense whatever, is a person of good character, and understands the duties and obligations of citizenship under a republican form of government; that heretofore, he has enjoyed all the rights and exercised all the privileges of a citizen of the United States and of the State of Alabama, until the 10th day of April, 1902, when he applied to the board of registrars of Montgomery county for registration as an elector of said State, while said board was in session at the court house in the city of Montgomery, and open for the registration of the qualified electors of said county, and complied with all the reasonable requirements of said board, and was by them refused and denied registration, for no other reason than his race and color; and said board required affiant to furnish the testimony of two white persons to testify to his character, and refused to accept the testimony of any colored person, while all white men applying for registration were registered upon their affidavit of qualifications without further evidence, but all colored persons were required to produce two white persons to testify to their qualifications and character; that large numbers of colored persons were refused and denied registration solely on the ground
72 of their race and color; that he estimates the number of negroes disfranchised by the action of said board at about 5,000; affiant says that the juries in the trial courts of Montgomery county are composed exclusively of persons of the white race, although the colored people are in the majority in said county, and that all colored persons are excluded from service on the juries in any of the State courts in said county, on account of their race and color, although otherwise qualified, and have been so excluded for a great many years; and that affiant is informed and believes that all negroes are likewise excluded from jury service in all the State courts throughout the State of Alabama.

E. M. DALE.

Sworn to and subscribed before me this 25th day of June, 1902.

[SEAL.] J. A. ELMORE,
U. S. Commissioner.

Affidavit No. 8.

STATE OF ALABAMA, }
Montgomery County. }

Before me, the undersigned authority, in and for said county, on this day personally appeared Derry Fonville, who makes affidavit that he is about 58 years old and is a person of dark complexion and of African descent known as a negro, that he was born in the State of South Carolina, and has lived in the State of Alabama since about 1853; that he has resided in the county of Montgomery and in ward 5 of the city of Montgomery about 14 years next before the time he applied for registration as herein set forth; that he has never been convicted of any offence whatever, is a person of good character, and understands the duties and obligations of citizenship under a republican form of government; that he honorably served in the land forces of the United States, in the late war between the States known as the Civil War, in Company H of the 82nd regiment U. S. C. V. I. and that he is a pensioner under the laws of the United States, and is enrolled as such at the Knoxville
73 agency of the U. S. Pension Office; that heretofore, he has exercised all the privileges, and enjoyed all the rights of a citizen of the United States and of the State of Alabama until about the 7th May 1902, when he applied to the board of registrars of Montgomery county, for registration as an elector of the State of Alabama while said board was in session at the court house in the city of Montgomery, open for the registration of qualified electors of said county, and complied with the law, and all the reasonable requirements of said board and was by them refused and denied registration for no other reason than his race and color; and that he exhibited to said board his pension voucher and certificate showing that he was a pensioner under the laws of the United States, and had honorably served in the land forces of the United States, and that said board still denied and refused to register him, and was told by them to furnish the testimony of two white men as to his character and qualifications, and said board refused to accept the testimony of any colored person, and that thereupon affiant procured the testimony of two of the best white men in Montgomery county who testified and swore to his character and qualifications as an elector, but that said board still refused and denied him registration for no other reason than his race and color, and at the same time refused large numbers of negroes solely on the grounds of their race and color, while all white men were registered upon their application without any further proof than their oath of application, but all negroes were compelled to produce the testimony of two white men, affiant further says that he owns and pays taxes on five hundred

dollars' worth of real estate in the county of Montgomery, which is assessed at five hundred dollars; affiant further says that the juries in the trial courts of Montgomery county are composed exclusively of white men, and that all negroes are excluded from jury service solely on the ground of their race and color, although otherwise qualified for such service, and although the colored people are in the majority in said county, and have been so excluded for a great many years.

74 DERRY FONVILLE.

Sworn to and subscribed before me this 28th day of June, 1902.

J. A. ELMORE,
[SEAL.] *U. S. Commissioner.*

Affidavit No. 9.

STATE OF ALABAMA, }
Bullock County. }

Before me, the undersigned authority, in and for said county, on this day personally appeared Cain Rogers, who makes affidavit that he is 70 years of age, and is a person of dark complexion and of African descent known as a negro, that he was born in the State of Georgia, and has lived in the State of Alabama for 50 years; that he has resided in said Bullock county 30 years, and in precinct No. 3 of said county 30 years, next before the time when he applied for registration as hereinafter set forth; that he has never been convicted of any offense whatever, is a person of good character, and understands the duties and obligations of citizenship under a republican form of government; that heretofore he has enjoyed all the rights and exercised all the privileges of a citizen of the United States and of the State of Alabama until the 24th day of April 1902, when he applied to the board of registrars of said county for registration as an elector of said State while said board were in session at Union Springs, in said county, open for registration of the qualified electors of said precinct and county, and complied with all the reasonable rules of said board, and was by them refused and denied registration for no other reason than his race and color, and large numbers of his race were refused registration for the same reason, while all white men applying to said board were registered.

CAIN ROGERS.

Sworn to and subscribed before me this 24th day of June 1902.

H. P. CHAPPELL, *J. P.*

75 To the clerk of the city court of Montgomery:

Let alternative writ of mandamus issue as prayed in the foregoing petition returnable and triable on the 13th day of October 1902.

Done this 1st day of July, 1902.

A. D. SAYRE,
Judge of the City Court of Montgomery.

We hereby accept service of the within application for the writ of mandamus and waive copy of same.

W. A. GUNTER.
CHAS. B. TEASLEY.
E. J. HARRIS.

July 7, 1902.

Filed in office July 1st, 1902.
H. H. MATTHEWS, *Clerk.*

In the City Court of Montgomery.

JACKSON W. GILES
vs.
C. B. TEASLEY, W. A. GUNTER, and E. J. Harris, Board of Registrars of Montgomery County, Alabama. } Petition for Mandamus.

And now comes said respondents by their attorney Charles G. Brown and move the court to quash the said petition and the order of Hon. A. D. Sayre, judge of said court, on the ground stated in his motion to strike from the files said petition.

CHARLES G. BROWN,
Attorney for Respondents.

Filed in office 13th day of Oct., 1902.
H. H. MATTHEWS, *Clerk.*

City Court of Montgomery.

JACKSON W. GILES
vs.
C. B. TEASLEY, W. A. GUNTER, and E. J. Harris, Board of Registrars of Montgomery County, Alabama. } Petition for a Mandamus.

Come the said respondents by their attorney Charles G. Brown, and show unto the court that no alternative writ of mandamus as ordered by the Hon. A. D. Sayre, judge of said court, has been served on them, or any of them, nor have they, or any of them, waived the issuance and service on them, or any other of them of said alternative writ; therefore they say that they should not be required now to further answer in the premises.

76

CHARLES G. BROWN,
Attorney for Respondents.

In the City Court of Montgomery.

JACKSON W. GILES *vs.* C. B. TEASLEY, W. A. GUNTER, and E. J. Harris, Board of Registrars of Montgomery County, Alabama.	Petition for Mandamus.

And now comes the said defendant- by their attorney Charles G. Brown and move the court to strike said petition from the files, because the same purports to be a petition addressed to Hon. A. D. Sayre, judge of the city court of Montgomery for the issuance of a writ of mandamus to be directed to the respondents, as board of registrars, commanding them to register said petitioner as a qualified voter under the suffrage provisions of the revised constitution of the State of Alabama; and for ground of said motion state the following That said petition is filed in the name of Jackson W. Giles, and not in the name of the State of Alabama upon the relation of said Jackson W. Giles.

CHARLES G. BROWN,
Attorney for Respondents.

Filed in office this 13th day of October, 1902.
H. MATTHEWS,
Clerk of City Court of Montgomery.

In the City Court of Montgomery.

JACKSON W. GILES *vs.* C. B. TEASLEY, W. A. GUNTER, and E. J. Harris, Board of Registrars of Montgomery County, Alabama.	Petition for Mandamus.

And now comes the said C. B. Teasley, W. A. Gunter, and E. J. Harris by their attorney Charles G. Brown and defends the wrong and injury when etc., and says that the said petition and the matters and things therein contained in manner and form as in said petition stated and set forth are not sufficient in law for the said Jackson W. Giles to have, or maintain his aforesaid action against them, and that they are not bound by law to answer the same—and the said C. B. Teasley, W. A. Gunter and E. J. Harris state and show to the court the following cause of demurrer
77 to the said petition—that is to say:

1st. Said petition prays the court for a peremptory writ of mandamus to be issued directed to said respondents commanding them as such board of registrars to register the said Jackson W. Giles as a qualified voter under the suffrage provisions of the con-

stitution of said State on the 3rd day of September, 1901, and which went into effect on the 28th day of November, 1901, and said petition avers that the said suffrage provisions of said constitution are unconstitutional and void.

2nd. Because said petition alleges and avers that the said suffrage provisions of said constitution fixing the qualifications for registration as an elector, and specially the qualifications as such elector having the right to vote at the general election to be held under said constitution in said State on the first Tuesday after the 1st Monday in November, 1902, are unconstitutional and void and violative of the XIII and XIV amendments of the Constitution of the United States, and yet said petition prays for a peremptory mandamus to said respondents as such board of registers to register him under said provisions as such a qualified voter.

3rd. By averring that the said suffrage provisions of said constitution *and* unconstitutional, null and void as aforesaid, petitioner is estopped to demand that this court issue a peremptory mandamus to said respondents to register him as such an elector under said suffrage provisions.

4th. Because by averring that paragraph, or section 180, and the several subdivisions thereof are unconstitutional, null and void, and that paragraph or section 181 which provides for the appointment and the fixing and defining of the powers and duties of said board of registrars, and especially that the first and second sub-divisions thereunder are unconstitutional, null and void, the petitioner cannot demand that this court issue a peremptory mandamus to these respondents commanding them to perform an unconstitutional and illegal and invalid act.

5th. Because the averments of his petition are inconsistent with and antagonistic to the relief prayed for in and by the petition.

78 6th. Becau-e the relief prayed for should not be granted under the averments of his petition.

7th. That the prayer for relief is inconsistent and antagonistic in this that he prays that the court shall declare said suffrage provision unconstitutional, null and void, that said paragraph and sub-divisions thereunder as aforesaid are likewise unconstitutional, null and void, and yet also prays that this court issue a peremptory mandamus to said respondents to perform an unconstitutional, illegal and invalid act, and one which they have no right and authority to do and one that would violate the XIII and XIV amendments to the Constitution of the United States.

8th. Because petitioner has a plain and adequate remedy at law.

9th. Because petitioner has a plain and adequate constitutional and statutory remedy at law.

10th. Because the petitioner at and before the time of the filing of his petition had a plain and adequate constitutional and statutory remedy at law.

11th. Under the frame and averments of his petition the peti-

tioner has no right to pray for relief for all members of his race qualified as in said petition averred.

12th. Because said respondents as such board of registrars have no authority in law, or fact, to register all qualified members of his race under the constitution and laws of the State of Alabama existing prior to the adoption of said secs. 180, 181, 183, 185, 187 and 188 of article VIII of the new constitution of Alabama.

13th. The petitioner claims and demands that he be registered by the said board of registrars under the suffrage provisions of said constitution, and yet avers therein that said constitutional provisions are unconstitutional and void.

14th. The petitioner claiming and demanding a right under the suffrage provisions of said constitution is estopped to assert the unconstitutionality and invalidity of said provision.

15th. That the petition asks for a mandamus to require judicial action in a particular manner and not merely to consider and
79 act on the application of the petitioner and to grant or refuse it.

16th. That the petition asks for a different remedy than that given by the constitutional provision for improperly refusing registration—which remedy being specific for a new and specific right must be followed and is exclusive of all other remedies.

CHARLES G. BROWN,
Attorney for Respondents.

Filed in office this 13th day of October 1902.

H. H. MATTHEWS,
Clerk of City Court of Montgomery.

MONDAY, *October 13th, A. D.* 1902.

The court met pursuant to adjournment.
Present: Hon. A. D. Sayre, judge presiding.

JACKSON W. GILES *vs.* CHAS. B. TEASLEY, W. A. GUNTER, JR., and E. Jeff Harris, Board of Registrars of Montgomery County, Alabama.	# 2135.	Mandamus.

This day came the parties by their attorneys, and by leave of the court the respondents withdraw their motion to quash proceedings because of lack of service, and their motion to strike and quash petition because the said petition is not filed in the name of the State of Alabama, and the respondents demurrer to the petition being argued by counsel and understood by the court, it is considered and ordered by the court and it is the judgment of the court, that the said demurrer to the petition be and same is hereby sus tained. And the petitioner failing to amend his petition, it is considered and ordered by the court and it is the judgment of the court

that the said petition be and the same is hereby dismissed. It is further considered and ordered by the court that the respondents go hence and recover of the petitioner the costs in this behalf expended, for which let execution issue.

80 THE STATE OF ALABAMA, }
Montgomery County. }

In the City Court of Montgomery.

JACKSON W. GILES, Plaintiff,
vs.
CHAS. B. TEASLEY, WM. A. GUNTER, Jr., and E. Jeff Harris, Board of Registrars of Montgomery County, Alabama, Defendants.
} Application for Writ of Mandamus to Compel Registration of Applicant.

Judgment was rendered in the above entitled cause, in favor of said defendants, sustaining their demurrer and dismissing the application of the petitioner, on the 13th day of October, 1902, from which judgment the said plaintiff or applicant has prayed an appeal to the supreme court of the State of Alabama.

Now therefore know all men by these presents, that we Jackson W. Giles, A. S. Watkins, John Phillips and Reuben E. Lee acknowledge ourselves security for all the costs of the said appeal taken to the supreme court by the said Jackson W. Giles from the said judgment in said cause.

Witness our signatures, this 18th day of October, 1902.

JACKSON W. GILES.
A. S. WATKINS.
JOHN PHILLIPS.
REUBEN LEE.

Approved this 25th day of October, 1902.
H. H. MATTHEWS,
Clerk City Court of Montgomery.

Filed in office this 25th day of October, 1902.
H. H. MATTHEWS,
Clerk City Court of Montgomery.

81 *Notice of Writ of Error.*

THE STATE OF ALABAMA, }
Montgomery County. }

To any sheriff of the State of Alabama, Greeting:

You are hereby commanded to summon Chas. G. Brown, attorney of record of Chas. B. Teasley, Wm. A. Gunter, Jr., and E. J.

Harris, board of registrars of Montgomery county, Alabama, to appear at the next term of the supreme court of said State, then and there to defend an appeal which Jackson W. Giles has this day sued out, returnable to said court to reverse a judgment from Cgas. B. Teasley, W. A. Gunter, Jr., and E. J. Harris, board of registrars of Montgomery county, Alabama at the Oct. term, 1902, of the city court of Montgomery recovered against Jackson W. Giles, and make immediate return of this writ, &c.

Witness, Henry H. Matthews, clerk of said city court, this 25th day of October, A. D. 1902.

H. H. MATTHEWS,
Clerk of the City Court of Montgomery.

Received in office Oct. 25th 1902.

W. R. WALLER, *Sheriff.*

Executed by serving a copy of the within on Chas. G. Brown, att'y of record, this Oct. 29th, 1902.

W. R. WALLER, *Sheriff.*
G. M. POWELL, *D. S.*

THE STATE OF ALABAMA, }
Montgomery County. }

I, Henry H. Matthews, clerk of the city court of Montgomery, in and for said county and State, do hereby certify that the foregoing pages numbered from 1 to 72 inclusive contain a full, true and correct transcript of the record and proceedings of said court in a certain cause lately therein pending, wherein Jackson W. Giles was petitioner and Charles B. Teasley, W. A. Gunter Jr., and E. J. Harris, board of registrars of Montgomery county, Alabama, were respondents.

And I further certify that the said petitioner Jackson W. Giles did on the 18th day of October, 1902, pray for and obtain an appeal from the judgment of the said city court of Montgomery to the present term of the supreme court of Alabama, upon en-
82 tering into bond for the costs of said appeal, *which* Jackson W. Giles, A. S. Watkins, John Phillips and Reuben E. Lee as sureties thereon, which said bond has been approved by me.

Witness my hand this the 2nd day of December, 1902.

H. H. MATTHEWS,
Clerk of the City Court of Montgomery.

83 In the Supreme Court of the State of Alabama.

JACKSON W. GILES, Appellant,
vs.
CHAS. B. TEASLEY ET AL., Board of Registrars of Montgomery County, Alabama, Appeller. } Assignments of Error.

And now comes the appellant by his attorney and assigns the following errors in the rulings and proceedings as of the court below, from which this appeal is taken upon which he relies for reversal in this court, to-wit:

First Assignment of Error.

Because the court erred in sustaining the demurrer and dismissing the petition, when the allegations of the petition showed that section- 180, 181, 183, 184, 185, 186, 187, 188 of article 8 of the constitution of Alabama were repugnant to the 14th and 15th amendments to the Constitution of the United States, in that they were designed and intended to deprive petitioner and the negroes of Alabama of their right to vote, on account of their race and color and previous condition of servitude without depriving a single white man in the State of Alabama of his right to vote.

Second Assignment of Error.

Because the court erred in sustaining the demurrer and dismissing the petition when the petition alleged that section 180, of article 8, of the new constitution of Alabama was repugnant to the 14th and 15th amendments to the Constitution of the United States, in that subdivision- 1 & 2 of said section did not contain such a statement of qualification- for suffrage as are applicable to and attainable by, all alike, regardless *to* race and color; and that said subdivisions in effect deprive the petitioner and the negroes of Alabama of the right to vote, on account of their race and color and previous condition of servitude; and that subdivision three of *of* said section is equally repugnant to the said amend-
84 ments to the Constitution of the United States, because it is unreasonable too general, and invests the registrars with absolute and arbitrary power, and in effect denies the petitioner the right to vote because of his race and color.

Third Assignment of Error.

Because the court erred in sustaining the demurrer dismissing the petition, when the same alleged that section- 181, 183, 184,

185, 187, and 188, of article 8 of the new constitution of Alabama were designed and especially intended to apply to the petitioner and the negroes of Alabama, and were not intended to operate against or effect any white person in said State, because all the white men in Alabama were allowed to qualify under section 180, while the negroes were refused qualification under that section and were thus forced to wait until section 181, and kindred sections went into operation; and were part of one entire scheme on the part of the party in power and dominant race in the State of Alabama to deny petitioner and the negroes of Alabama the right to vote on account of their race and color.

Fourth Assignment of Error.

Because the court erred in sustaining the demurrer and dismissing the petition, when the same alleged that section 186 of article 8 of the constitution of Alabama, was in contravention of the 14th and 15th amendments to the Constitution of the United States, in that the board of registrars composed entirely of partisan white men were given absolute power, and the discretion of a court for the purpose of more effectually depriving petitioner and his race of the right to vote on account of their race and color, and that the pretended right of appeal to the circuit court was given for the same purpose, because the juries of Alabama are composed exclusively of white men, negroes being excluded from service on any of the juries of the trial courts of Alabama, on account of their race and color, although otherwise qualified for jury service; and
85 have been so excluded for a great many years so that an appeal from the decision of the registrars would result in the same discrimination and race prejudice.

Fifth Assignment of Error.

Because the court erred in sustaining the demurrer and dismissing the petition when the same alleged facts showing that the appellees who were charged with the administration and enforcement of said suffrage provisions of said constitution, refused to register petitioner and large numbers of his race for no other reason than their race and color, when they were otherwise qualified under the law, and required them to produce the testimony of white men as to their qualifications and refused to accept the testimony of colored men, while all white men applying for registration were registered and were not required to produce any evidence except the affidavit of the applicant.

WILFORD H. SMITH,
Att'y for Appellant.

(Minutes Supreme Court, vol. 54, p. 52.)

SUPREME COURT, TUESDAY, *Dec.* 16, 1902.

The court met pursuant to adjournment.
Present: All the justices.

Montgomery City Court.

JACKSON W. GILES
v.
CHAS. B. TEASLEY ET ALS., Board of Registrars, &c. } 2 Div. 369.

Come the parties by attorneys, and submit this cause on briefs for decision.

And the court adjourned until Wednesday December 17th 1902 at 10 o'clock a. m.

(Minutes, 54, p. 160.)

SUPREME COURT, SATURDAY, *February 28th*, 1903.

The court met pursuant to adjournment.
Present: All the justices.

Montgomery City Court.

JACKSON W. GILES
v.
CHAS. B. TEASLEY ET ALS., Board of Registrars, &c. } 3 Div. 369.

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the city court there is no error. It is therefore considered that the judgment of the city court be in all things affirmed. It is also considered that the appellant, and A. S. Watkins, John Phillips and Reuben E. Lee, sureties on the appeal bond, pay the costs of appeal of this court and of the city court.

And the court adjourned until Monday April 6th 1903 at 10 o'clock a. m.

87 (Supreme Court of Alabama. Filed Feb. 28, 1903. Rob't F. Ligon, Jr., Clerk.)

THE STATE OF ALABAMA, *Judicial Department.*

The Supreme Court of Alabama, November Term, 1902.

JACKSON W. GILES
v.
CHAS. B. TEASLEY ET AL., Board of Registrars, etc. } 3 Div. 369.

Appeal from Montgomery city court.

TYSON, *J.:*

The petition in this case is for a writ of *mandamus* to compel the board of registrars for Montgomery county to register the petitioner as an elector. It alleges that sections 180, 181, 183, 184, 185, 186, 187 and 188 of art. VIII of the constitution of 1901 fixing the qualification of electors and prescribing the mode of registration are unconstitutional because violative of the 14th and 15th amendments of the Constitution of the United States. The prayer is in substance that these sections of the constitution above enumerated be declared null and void and that an alternative writ of *mandamus* issue to the board of registrars commanding them to re*h*ister as a qualified elector of the State of Alabama, upon the books provided therefor, the name of petitioner and to issue to him a certificate of the fact in disregard of said sections of the constitution etc. etc.

As these sections of the constitution assailed created the board of registrars, fixed their tenure of office, defined and prescribed
88 their duties, if they are stricken down on account of being unconstitutional, it is entirely clear that the board would have no existence and no duties to perform. So then taking the case as made by the petition, without deciding the constitutional question attempted to be raised or intimating anything as to the correctness of the contention on that question, there would be no board to perform the duty sought to be compelled by the writ and no duty imposed of which the petitioner can avail himself in this proceeding, to say nothing of his right to be registered.

Affirmed.

89 THE STATE OF ALABAMA, }
Judicial Department. }

The Supreme Court of Alabama, November Term, 1902.

JACKSON W. GILES
v.
CHAS. B. TEASLEY ET AL., Board of Registrars, &c. } 3 Div. 369.

Appeal from Montgomery city court.

THE STATE OF ALABAMA, }
City and County of Montgomery. }

I, Robert F. Ligon, clerk of the supreme court of Alabama, do hereby certify that the foregoing pages numbered from 1 to 85 and lettered from "*a*" to "*e*," inclusive, contain a full, true, and correct copy of the record, minute and judgment entries, and of the opinion, of said supreme court in the above stated cause, as the same appear and remain of record and on file in this office.

I further certify that, application for writ of error in said cause having been made, the said application was denied, and is endorsed as follows:

"The writ of error sought in the foregoing application is denied for that no Federal question was involved in the decision of the case, or decided.—This, May 15, 1903.—Thos. N. McClellan, chief justice, supreme court of Alabama."

Witness, Robert F. Ligon, clerk of the supreme court of Alabama, at the capitol, this, the 15 day of May A. D. 1903.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON,
Clerk of the Supreme Court of Alabama.

90 *Know all men by these presents*, that we, Jackson W. Giles as principal, and Nathan Alexander and Alexander J. Rodgers, as sureties, are held and firmly bound unto Charles B. Teasley, William A. Gunter Jr. and E. Jeff Harris, board of registrars of Montgomery county Alabama in the full and just sum of two hundred and fifty dollars to be paid to the said Teasley, Gunter and Harris, board of registrars aforesaid, their certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of May, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a term of the supreme court of the State of Alabama, in a suit depending in said court, between Jackson W. Giles and Charles B. Teasley, William A. Gunter, Jr. and E. Jeff Harris, board of registrars of Montgomery county Alabama, in an applica-

tion for a writ of mandamus, a judgment was rendered against the said Jackson W. Giles and the said Giles having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles B. Teasley, Wm. A. Gunter Jr. and E. Jeff Harris, board of registrars of Montgomery county Alabama citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, *the condition of the above obligation is such*, that if the said Jackson W. Giles shall prosecute his writ of error to effect, and answer all costs of he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JACKSON W. GILES. [SEAL.]
NATHAN H. ALEXANDER. [SEAL.]
ALEXANDER J. RODGERS. [SEAL.]

Sealed and delivered in presence of—
J. A. ELMORE.

Approved by—
EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

91 STATE OF ALABAMA, }
Montgomery County. }

Nathan H. Alexander whose name is signed to the foregoing bond as one of the sureties therein, being duly sworn deposes and says:—I reside in the city of Montgomery in said county and State, and am a free-holder therein, and am worth the sum of two hundred and fifty ($250.00) dollars over and above all property exempt from sale on execution.

NATHAN H. ALEXANDER.

Sworn to and subscribed before me this 25 day of May 1903.

{Seal of John A. Elmore, Middle District of Alabama, U. S. Commissioner.}

J. A. ELMORE,
U. S. Com'r.

STATE OF ALABAMA, }
Montgomery County. }

Alexander J. Rodgers whose name is signed to the foregoing bond as one of the sureties therein, being duly sworn deposes and says:—I reside in the city of Montgomery in said county and State, and am a free-holder therein, and am worth the sum of two hundred and fifty ($250.00) dollars over and above all property exempt from sale on execution.

ALEXANDER J. RODGERS.

Sworn to and subscribed before me this 25 day of May 1903.

{ Seal of John A. Elmore, Middle District of Alabama, U. S. Commissioner. }

J. A. ELMORE,
U. S. Com'r.

On this 25 day of May, 1903, in the city and county of Montgomery, State of Alabama, before me personally appeared Nathan H. Alexander and Alexander J. Rodgers both of whom are known to me to be the *to be the* individuals described in and who signed the foregoing bond as sureties therein, and then and there each of them severally acknowledged that he executed the foregoing bond.

Witness my signature this day and date first above written.

{ Seal of John A. Elmore, Middle District of Alabama, U. S. Commissioner. }

J. A. ELMORE,
U. A. Com'r.

91½ I, Thomas G. Jones, judge of the United States district court, for the district of Alabama, hereby certify that Nathan H. Alexander and Alex. J. Rodgers whose names are signed as sureties to the foregoing bond, are known to me and are free holders in Montgomery county, and I consider each of them worth over five hundred ($500.00) dollars in property subject to execution, and would approve the foregoing bond with them as sureties if the same was submitted to me.

Witness my signature this 26th day of May 1903.

THOS. G. JONES.

92 Supreme Court of the State of Alabama.

JACKSON W. GILES, Plaintiff in Error,
vs.
CHARLES B. TEASLEY, WILLIAM A. Gunter, E. Jeff Harris, Board of Registrars, Montgomery County, Alabama, Defendants in Error. } Application for Mandamus.

And now comes the said plaintiff in error by his attorney and makes the following assignments of error in the judgment and proceedings of this court, upon which he relies and expects to obtain a reversal in the Supreme Court of the United States, to wit:—

First Assignment of Error.

Because the supreme court of Alabama erred, in refusing to decide that the suffrage provisions of the constitution of Alabama were repugnant to the 14th and 15th amendments to the Constitution of

the United States, in the purpose for which they were framed and enacted; they being framed and enacted for the avowed purpose of disfranchising the negroes of Alabama, without disfranchising a single white man.

Second Assignment of Error.

93 The supreme court of Alabama erred in refusing to decide that the suffrage provisions of the constitution of Alabama were repugnant to the 14th and 15th amendments to the Constitution of the United States, in their language and meaning; they being so artfully framed that white men alone can become electors in the State of Alabama, and negroes can be excluded, and were excluded on account of their race and color and previous condition of servitude, except in such cases as happened to suit the arbitrary whims of the board of registrars.

Third Assignment of Error.

The supreme court of Alabama erred in refusing to decide that the suffrage provisions of the constitution of Alabama were made unconstitutional and void by the manner of their administration by the defendants in error, and all other boards in the State, in that they admitted all white men applying for registration to be registered as electors, and denied registration practically to all negroes, for no other reason than their race and color.

Fourth Assignment of Error.

The supreme court of Alabama erred in refusing to reverse the judgment of the city court of Montgomery, wherein the prayer of the plaintiff in error for a writ of mandamus was denied and his application dismissed on demurrer.

Wherefore the plaintiff in error prays that the judgment of the supreme court of Alabama affirming the judgment of the city
94 court of Montgomery, be reversed in the Supreme Court of the United States.

WILFORD H. SMITH,
Attorney for Plaintiff in Error.

95 JACKSON W. GILES
vs.
CHARLES B. TEASLEY, WILLIAM A. GUNTER, Junior, and E. Jeff Harris, Board of Registrars of Montgomery County, Alabama. } Application for Writ of Mandamus.

To the Honorable E. D. White, one of the justices of the Supreme Court of the United States:

Your petitioner, Jackson W. Giles, a citizen of the United States and of the State of Alabama respectfully petitions and shows:—

First. That a final judgment of the supreme court of Alabama, the highest court of the State of Alabama, in which a decision could be had, has been rendered against him in a suit where was drawn in question the validity of the suffrage provisions of the constitution of Alabama, and the authority of said defendant board of registrars, acting thereunder, on the ground that said suffrage provisions of the constitution of Alabama, were repugnant to the 14th and 15th amendments to the Constitution of the United States, and the decision of the said supreme court of Alabama in effect was in favor of the validity of the suffrage provisions of the constitution of Alabama, and the authority exercised under them by said defendant board, as will more clearly appear by the certified copy of the record in said case, from the said supreme court of Alabama, submitted with this petition.

96 Second. That your petitioner being of African descent, and of black complexion known as a negro, and a citizen of the United States, and having theretofore been an elector under the laws of the State of Alabama, was on the 13th day of March, 1902, refused registration, and was not allowed to qualify as an elector in the State of Alabama, for no other reason than his race and color, by said board, who were acting under and by authority of the suffrage provisions of the constitution of Alabama, which went into effect November 28th, 1901.

Third. Thereupon petitioner applied to the Honorable A. D. Sayre, judge of the city court of Montgomery, for a writ of mandamus to compel said board of registrars to allow him to qualify as an elector in the State of Alabama, and alleged in his petition the fact that he had been refused registration because of his race and color, and that more than seventy five thousand (75,000) of his race had been refused in said State for the same reason, also that the suffrage provisions under which said board were acting, were framed for the purpose of allowing only white men to become electors in the State of Alabama, and that by their language and meaning only white men could become electors in the State of Alabama, and negroes were thereby excluded, for no other reason than their race and color, in contravention of the 14th and 15th amendments to the Constitution of the United States.

Fourth. That a demurrer to said petition was sustained in
97 the city court of Montgomery, from which an appeal was taken to the supreme court of Alabama, and in that court the judgment of the lower court was affirmed, as will more fully appear by the record herewith submitted.

Fifth. Because manifest injustice has been done petitioner, in the judgment and proceedings in said case and the denial of the rights claimed by him under the 14th and 15th amendments to the Constitution of the United States.

Wherefore he prays for the allowance of a writ of error, and such other process as may cause said judgment to be corrected by the Supreme Court of the United States; as in duty bound he will ever pray.

WILFORD H. SMITH,
Attorney for Jackson W. Giles.

98 (Original.)

UNITED STATES OF AMERICA, *ss:*

To Charles B. Teasley, William A. Gunter, Jr., and E. Jeff Harris, as the board of registrars of Montgomery county, Alabama, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Alabama, wherein Jackson W. Giles is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, associate justice of the Supreme Court of the United States, this twenty-ninth day of May, in the year of our Lord one thousand nine hundred and three.

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

99 We hereby as attorneys of the within named defendants in error accept service of this citation & waive further service.
June 20, 1903.

GUNTER & GUNTER, *Att'ys.*

100 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of he judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Jackson W. Giles, appellant, and Charles B. Teasley, William A. Gunter, Jr., and E. Jeff Harris, as the board of registrars of Montgomery county, Alabama, appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the con-
101 struction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said appellant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twenty ninth day of May, in the year of our Lord one thousand nine hundred and three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

102 THE STATE OF ALABAMA, }
Judicial Department. }

The Supreme Court of Alabama, November Term, 1902.

JACKSON W. GILES
v.
CHAS. B. TEASLEY ET AL., Board of Registrars, &c. } 3 Div. 369.

Appeal from Montgomery city court.

THE STATE OF ALABAMA, }
City and County of Montgomery. }

I, Robert F. Ligon, clerk of the supreme court of Alabama, do hereby certify that the foregoing pages numbered from 1 to 85 and lettered from "*a*" to "*h*," inclusive, contain a full, true, and correct copy of the record, minute and judgment entries, and of the opinion, of said supreme court in the above stated cause, and of the appeal bond by the plaintiff in error, as the same appear and remain of record and on file in this court.

I further certify that, application for writ of error in said cause having been made to the supreme court of Alabama, the said application was denied, and is endorsed as follows:

"The writ of error sought in the foregoing application is denied for that no Federal question was involved in the decision of the case, or decided.—This May 15, 1903.—Thos. N. McClellan, chief justice supreme court of Alabama."

I further certify that the petitition for writ of error, the writ of error, the citation and acceptance of service, the assignments of error, the petition for reversal of the judgment of the supreme court of Alabama, are attached.

Witness my hand, and the seal of the supreme court of Alabama, at the capitol, this the 22nd day of June, A. D. 1903.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON,
Clerk of the Supreme Court of Alabama.

Endorsed on cover: File No. 18,989. Alabama supreme court. Term No. 338. Jackson W. Giles, plaintiff in error, *vs.* Charles B. Teasley, William A. Gunter, Jr., and E. Jeff Harris, as the board of registrars of Montgomery county, Alabama. Filed June 29, 1903. File No. 18,989.

FILE COPY.

Supreme Court of the United States.

OCTOBER TERM, 1908.

Office Supreme Court U. S.
FILED
DEC 18 1908
JAMES H. McKENNEY,
Clerk.

No. 337.

JACKSON W. GILES, *Plaintiff in Error,*
against
CHAS. B. TEASLEY ET AL., *Board of Registrars of Montgomery County, Alabama.*
} Suit for Damages.

No. 338.

JACKSON W. GILES, *Plaintiff in Error,*
against
CHAS. B. TEASLEY ET AL., *Board of Registrars of Montgomery County, Alabama.*
} Application for Mandamus.

BRIEF FOR PLAINTIFF IN ERROR.

WILFORD H. SMITH,
Attorney for Plaintiff in Error.

(18,988 & 18,989.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 9040

27532

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 337.

JACKSON W. GILES, *Plaintiff in Error,* *against* CHAS. B. TEASLEY, WILLIAM A. GUNTER, JR., and E. JEFF HARRIS, *Board of Registrars of Montgomery County, Alabama.*	Suit for Damages.

No. 338.

JACKSON W. GILES, *Plaintiff in Error,* *against* CHAS. B. TEASLEY, WILLIAM A. GUNTER, JR., and E. JEFF HARRIS, *Board of Registrars of Montgomery County, Alabama.*	Application for Mandamus. Briefed and Argued as one Case by Order of the Court.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

Number 337 is an action for damages brought in the city court of Montgomery against the defendants in error for refusing to register the plaintiff in error and issue to him a certificate of qualification as an elector, for no other reason than his race and color, while all white men possessing the

same qualifications were registered and given certificates for life.

Record 337, pages 2 to 5.

Number 338 is an application for a writ of mandamus, also brought in the city court of Montgomery, to compel the defendants in error to register the plaintiff in error, and to issue to him a certificate of qualification as an elector, on the ground that he had been refused registration and a certificate, for no other reason than his race and color, while all white men possessing the same qualifications had been given life certificates.

Record 338, pages 1 to 9.

In both cases it was claimed that sections 181, 183, 184, 185, 186, 187, and 188 of "article VIII" of the Alabama constitution of 1901, under and by virtue of which the defendants in error were appointed and acting, were repugnant to the fourteenth and fifteenth amendments to the Constitution of the United States, in their purpose, in their language and meaning, and in the way and manner they were administered, and rights were asserted and claimed under the Federal Constitution. Demurrers to the complaint and application were sustained in both cases, and they were dismissed by the trial court. The plaintiff in error appealed to the supreme court of Alabama, and the judgment of the trial court was there affirmed. Whereupon writs of error were sued out to the supreme court of Alabama bringing the cases to this court. Plaintiff in error now points out the following errors in the decision of the supreme court of Alabama upon which he relies for reversal in this court, to wit:

ASSIGNMENT OF ERRORS.

First Assignment of Error.

Because the supreme court of Alabama erred in refusing to decide that the suffrage provisions of the constitution of Alabama were repugnant to the fourteenth and fifteenth amendments to the Constitution of the United States in the purpose for which they were framed and enacted, they being framed and enacted for the avowed purpose of disfranchising the negroes of Alabama without disfranchising a single white man.

Second Assignment of Error.

The supreme court of Alabama erred in refusing to decide that the suffrage provisions of the constitution of Alabama were repugnant to the fourteenth and fifteenth amendments to the Constitution of the United States in their language and meaning, they being so artfully framed that white men alone can become electors in the State of Alabama and negroes can be excluded and were excluded on account of their race and color and previous condition of servitude, except in such cases as happened to suit the arbitrary whims of the board of registrars.

Third Assignment of Error.

The supreme court of Alabama erred in refusing to decide that the suffrage provisions of the constitution of Alabama were made unconstitutional and void by the manner of their

administration by the defendants in error and all other boards in the State, in that they admitted all white men applying for registration to be registered as electors, and denied registration practically to all negroes, for no other reason than their race and color.

FOURTH ASSIGNMENT OF ERROR.

The supreme court of Alabama erred in refusing to reverse the judgment of the city court of Montgomery, wherein the prayer of the plaintiff in error for a writ of mandamus was denied, and his application and complaint for damages dismissed on demurrer.

ARGUMENT.

We submit that the record in these cases clearly shows that nothing but a Federal question was therein presented to the highest court of Alabama for decision, and that its decision was absolutely necessary to the determination of the causes, and that the judgment rendered by the supreme court of Alabama could not have been rendered without deciding the Federal question.

Johnson against Risk, 137 U. S., 300.

Wood Machine Co. against Skinner, 139 U. S., 293.

The Alabama supreme court undertook to avoid the Federal question in the following opinion in the suit for damages, to wit:

"TYSON, *J.*:

"If we accept (without deciding) as correct the insistence laid in appellant's brief that section 186 of article VIII of

the constitution of 1901 is void because repugnant to the 14th and 15th amendments of the Constitution of the United States, then the defendants were wholly without authority to register the plaintiff as a voter and their refusal to do so cannot be made the predicate for a recovery of damages against them.

"On the other hand if that section is the source of their authority, the jurisdiction is expressly conferred by it upon the defendants as a board of registrars to determine the qualifications of plaintiff as an elector and of his right to be registered as a voter. For their judicial act of refusing to register him predicated upon that determination, they are not liable in this action.

17 Am. & Eng. Ency. Law (2d ed.), pp. 727, 728, and notes.

"Affirmed."

Record 377, page 12.

The same thing was attempted in the following opinion in the application for mandamus, to wit:

"TYSON, *J.*:

"The petition in this case is for a writ of mandamus to compel the board of registrars for Montgomery county to register the petitioner as an elector. It alleges that sections 180, 181, 183, 184, 185, 186, 187 and 188 of art. VIII of the constitution of 1901, fixing the qualification of electors and prescribing the mode of registration, are unconstitutional because violative of the 14th and 15th amendments of the Constitution of the United States. The prayer is in substance that these sections of the constitution above enumerated be declared null and void and that an alternative writ of mandamus issue to the board of registrars commanding them to register as a qualified elector of the State of Alabama, upon the books provided therefor, the name of peti-

tioner and to issue to him a certificate of the fact in disregard of said sections of the constitution, etc., etc.

"As these sections of the constitution assailed created the board of registrars, fixed their tenure of office, defined and prescribed their duties, if they are stricken down on account of being unconstitutional, it is entirely clear that the board would have no existence and no duties to perform. So then taking the case as made by the petition, without deciding the constitutional question attempted to be raised or intimating anything as to the correctness of the contention on that question, there would be no board to perform the duty sought to be compelled by the writ and no duty imposed of which the petitioner can avail himself in this proceeding, to say nothing of his right to be registered.

"Affirmed."

Record 338, page 63.

The effect, however, of these decisions was to deny the rights claimed by the plaintiff in error under the Constitution of the United States, and to uphold the suffrage provisions of the constitution of Alabama, and the authority exercised under them, which were drawn in question as being repugnant to the Federal Constitution, and it is well settled that this court has jurisdiction in such cases to review the decision of a State court.

The language of Mr. Justice White, in Railway Company *vs.* Elliott, 184 U. S., 534, seems to be clearly in point. He said:

"The fact that a State court while deciding the Federal question erroneously held that it was not a Federal one does not take the case out of the rule, that when a Federal question has been decided below jurisdiction exists to review. The result of a contrary doctrine would be this; that no case where the question of Federal right had been actu

ally decided, could be reviewed here, if the State court in passing upon the question had also decided that it was non-Federal in its character."

Nor can the political nature of the rights involved be urged in these cases against the jurisdiction of this court; for it was held in McPherson *vs.* Blacker, 146 U. S., 23, that this court will not decline jurisdiction "upon the inadmissible suggestion that action might be taken by political agencies in disregard of the highest tribunal of the State as reviewed by our own." That was an application for mandamus to be directed to the secretary of state of the State of Michigan to compel action in a political matter.

The cases of Wiley *vs.* Sinkler, 179 U. S., 58, and Swafford *vs.* Templeton, 185 U. S., 487, are authority for the jurisdiction of the Federal courts to entertain a suit for damages where a political right under the Federal Constitution has been denied by virtue of an unconstitutional State statute, and much more obvious is the authority of this court to review the decision of a State court in such an action.

Kinneen *vs.* Wells, 144 Mass., 497.

The jurisdiction of this court, therefore, to review the decision of the supreme court of Alabama being beyond any question of doubt, we now call the court's attention to the reasons why the judgment of the Alabama supreme court should be reversed, and to that end submit the following

POINTS OF ARGUMENT.

I.

Because all the material facts alleged by the plaintiff in error in his complaint and application for mandamus were admitted by the demurrers of the defendants in error according to the elementary rules of pleading.

It was admitted that, although the whites and blacks were nearly equal in the population of Alabama, the convention which adopted the constitution, under and by virtue of which the defendants in error were appointed and acting, was composed exclusively of members of the white race, and was called for the avowed purpose of disfranchising the negroes without disfranchising a single white man. It was also admitted that the plaintiff in error was a citizen of the United States and of the State of Alabama, of African descent, known as a negro, and had theretofore been an elector under the laws of Alabama; that he applied for registration and was refused for no other reason than his race and color, and at the same time large numbers of his race were refused for the same reason, while all the white men who applied for registration, although possessing the same qualifications as the plaintiff in error, were registered and given certificates; that the plaintiff in error and all the members of his race applying for registration were compelled to furnish the testimony of white men, the testimony of all negroes being refused, while the white men applying for registration were registered upon their affidavit and application without any testimony.

II.

Because the purpose sought to be accomplished by the framers of the suffrage provisions of the constitution of Alabama was repugnant to the fourteenth and fifteenth amendments to the Constitution of the United States, such purpose being to disfranchise the negroes without disfranchising any white man.

Ah Kow *vs.* Nunan, 5th Sawyer, 553.
Cooley, Constitutional Limitations, 3d edition, p. 65.
Goedell *vs.* Palmer, 15 Appel. Div., N. Y., 86.

Had the constitutional convention been called for the purpose of establishing an educational or a property qualification, or a qualification of good moral character for all the electors of Alabama, black and white alike, and had carried out such a purpose, the plaintiff in error and the negroes of that Commonwealth would have made no complaint. But the convention made race and color the standard of qualification by resorting to a trick or legerdemain of law in constitution making.

In his opening address the Hon. John B. Knox, president of the convention, made the following statement of its purpose:

"In my judgment the people of Alabama have been called upon to face no more important situation than now confronts us, unless it be when they in 1861, stirred by the momentous issues of impending conflict between the North and South were forced to decide whether they would remain in or withdraw from the Union.

"Then as now, the negro was the prominent factor in the

issue. So long as the negro remains an insignificant minority and votes the Republican ticket, our friends in the North tolerate him with complacency, but there is not a State, and I might go further and say there is not an intelligent white man in the North, not gangrened by sectional prejudice and hatred of the South who would consent for a single day to submit to negro rule. If the negroes of the South should move in such numbers to the State of Massachusetts, or any other Northern State, as will enable them to elect the officers, levy the taxes, and control the government and policy of that State, I doubt not they would be met in the spirit as the negro laborers from the South were met in the State of Illinois, with bayonets led by a Republican governor, and firmly but emphatically informed, that no quarter would be shown them in that territory.

"And what is it that we do want to do? *Why, it is, within the limits imposed by the Federal Constitution to establish white supremacy in this State.*

"This is our problem and we should be permitted to deal with it unobstructed by outside influence, with a sense of our responsibility as citizens, and our duty to posterity. But if we would have white supremacy we must establish it by law—not by force or fraud.

"The justification for whatever manipulation of the ballot that has occurred in this State, has been the menace of negro domination. But a people cannot always live in a state of revolution. A time comes when, if they would be a free, happy and contented people, they must return to a constitutional form of government, where law and order prevail, and where every citizen stands ready to stake his life and his honor to maintain it. It has been urged in some quarters as a reason why this movement for a new constitution should be defeated, that we propose to adopt a suffrage plank which will offer to the negro an incentive to obtain an education, while the children of the white man will be without a like stimulant, because protected in his right to

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vote without regard to the density of his ignorance. I do not understand that any delegate to this convention is pledged to any such legislation. *We are pledged not to deprive any white man of the right to vote*, but this does not extend unless the convention chooses to extend it, beyond the life of voters now living."

Again, Judge Coleman, chairman of the committee on suffrage and elections, in his opening debate on the report of the committee submitting the suffrage provisions to the convention, advances the following argument:

"It should be remembered that the three conventions of Alabama which last assembled as a convention of the Democratic party, *declared that no white man should be disfranchised* except for crime." * * *

"Mr. President, and delegates of the convention, this Government was founded by white people. Its institutions have been preserved and enforced by the white race of this country, and it is within the past few years that the negro became a qualified voter, and citizen of the United States. In most of the States of this Union the proportion of such voters is so small that their influence is not felt in the general election. It is only in the Southern States that he has become an important factor, and under the present laws is a menace to our civilization, our happiness and prosperity. I would not violate any provision of the Constitution, but it is my opinion that we should go to the utmost limit allowed us to continue in control of this State and its political interests, that race of people which long has preserved its institutions and brought us through so much trouble, to our present prosperous condition." (Applause.)

III.

Because the suffrage provisions of the constitution of Alabama are in themselves repugnant to the fourteenth and fifteenth amendments to the Constitution of the United States by their language and meaning, they being so artfully constructed as to evade the prohibitions of the Federal Constitution, so that white men alone can become electors and negroes can be excluded on account of their race and color and previous condition.

Coxe *vs.* The State, 144 N. Y., 396.
Colon *vs.* Lisk, 153 N. Y., 188.
People *vs.* Albertson, 55 N. Y., 50.

Not only were they constructed in defiance and in fraud of the Federal Constitution, but with great ingenuity, so as to make it difficult to get the question of their constitutionality before the courts.

To give the court some idea of the contempt which the leaders of that convention had for the fifteenth amendment, I give the following from the closing speech of Judge Coleman, chairman of the committee on suffrage and elections, at the close of the debate on the committee's report:

"I was shocked to hear a man claiming pride in being a white man, to say that he regarded the 15th amendment as one of the brightest jewels in the crown, or one of the brightest something that is pinned to the Constitution. I don't remember exactly the language now. After hearing him say that, fellow-delegates, I was not surprised to hear him afterwards say that he feared neither man, hell nor the devil. If there was no other reason for calling this conven-

tion here, and no other reason for ratifying this constitution, it would be sufficient for me to work for it in order that so many of his constituents might be eliminated from the suffrage plank as to retire the gentlemen entertaining these sentiments. And I hope those living in that community will preserve the record of the man who could endorse the 15th amendment in Alabama, in view of all that we have gone through. I will not express my opinion of him." (Applause.)

"Mr. President, I believe as strongly as that I stand here, not only the fraud, the violence, the bloodshed, but I believe that not one of our fair women have ever been assaulted in this land but that the infamous act may be traced to the 15th amendment."

a. Because subdivisions 1 and 2 of section 180 of "article 8" are not such a statement of qualifications as are applicable to and attainable by all alike, regardless of race, color, or previous condition, but were framed purposely to discriminate against the negroes of Alabama, and to deny them the same rights as electors given to white men.

b. Because subdivision 3 of section 180 of "article 8" is made so general and indefinite as to invest the registrars with arbitrary power, so that they could discriminate against negroes and favor white men. The citizen is left to conjecture as to what kind of good character is meant, whether good moral character, or good character for peace or violence, or for honesty and fair dealing, or for truth and veracity. Likewise is a citizen at a loss to know what or which of the manifold duties and obligations of citizenship he is required to understand in order to meet the requirements of this subdivision.

c. Because section 186 of the suffrage article is repugnant to the Federal Constitution, in so far as the registrars were given the discretion and power of a court, with the right of appeal from their decision to the circuit court, thence to the supreme court, in view of the purpose the convention sought to accomplish by giving such discretion and power and in view of the admitted manner in which the registrars have used such discretion in the discharge of the duties of their office.

The supreme court of Alabama erroneously assumed that if this section was unconstitutional to the extent of investing the registrars with the power of contravening the prohibitions of the fourteenth and fifteenth amendments to the Federal Constitution, that then they would have no existence at all and no duties to perform. The right of the State of Alabama to appoint a board of registrars is not questioned in these cases, nor is its authority to prescribe their powers and duties, only to the extent of investing them with a discretion so as to accomplish the disfranchisement of the negroes on account of their race and color and previous condition, and the denial to them of the equal protection of the law, prohibited by the fourteenth and fifteenth amendments to the Federal Constitution.

IV.

Because the admitted facts showing the suffrage provisions of the constitution of Alabama in actual operation establish that practically all the white men in the State were admitted to the electorate and given life certificates, while practically all the negroes were denied registration on

account of their race and color and previous condition, which alone would render them unconstitutional, no matter what the intent was at the time of their enactment, and no matter in what form of language they were expressed.

In the great leading case of Yick Wo *vs.* Hopkins, 118 U. S., 356, upon which we have mainly relied, this court said:

"For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that whatever may have been the intent of the ordinances adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of the equal protection of the laws, which is secured to the petitioner and all other persons by the broad and benign provisions of the 14th amendment to the Constitution of the United States. Though the law itself be fair on its face, and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and an unequal mind, so as practically to make unjust and illegal discriminations between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

The same general principle of constitutional law is tersely put by Chief Justice Lewis, of the supreme court of Nevada, in the case of Davies *vs.* McKeeby, 5th Nevada, 396. He said:

"The form of a law by which an individual is deprived of a constitutional right is immaterial. The test of its constitutionality is whether it operates to deprive any

person of a right guaranteed or given by the Constitution. If it does, it is a nullity whatever may be its form."

V.

Because section 181 of the suffrage article of the constitution of Alabama is a part of one entire scheme to evade the fifteenth amendment to the Constitution of the United States, and to subject the negroes of Alabama to a different test than that required of white citizens, and should also be declared null and void, since it is admitted that practically all the white men have been admitted to the electorate for life under section 180, or the temporary plan, and practically all the negroes have been refused.

To allow section 181 to stand would be to sanction the discrimination against negroes, and force them to submit to an educational and property qualification test not required of white men, in contravention of the fourteenth and fifteenth amendments to the Federal Constitution.

In the case of The U. S. *vs.* Reese, 92d U. S., 214, Chief Justice Waite said:

"The 15th amendment does not confer the right of suffrage upon any one. It prevents the States of the United States from giving preferences in this particular to one citizen of the United States over another, on account of race, color or previous condition of servitude."

Fair and equal treatment as a citizen is all that the plaintiff in error and the negroes of Alabama are contending for in this litigation, which treatment will be accorded wherever the fifteenth amendment is held in proper esteem.

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It unfortunately so happened that after the negro had been nearly forty years an elector in Alabama the less thoughtful of her white people were appealed to and misled by crafty and designing politicians to enact that constitution to disfranchise him, in defiance of the benign provisions of the fourteenth and fifteenth amendments to the Constitution of the United States and in contempt of the *golden rule;* so that we are now compelled by these suits to appeal to this court, which is the exponent of the conscience and honor of the American people, to say whether or not fair and equal treatment shall still remain the portion of all the citizens of the United States in Alabama under the Federal Constitution.

WILFORD H. SMITH,
Attorney for Plaintiff in Error.

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Supreme Court of the United States,

OCTOBER TERM, 1903.

No. 337.

JACKSON W. GILES, PLAINTIFF IN ERROR, against CHAS. B. TEASLEY, ET AL., Board of Registrars of Montgomery County, Alabama.	Suit for Damages.

No. 338.

JACKSON W. GILES, PLAINTIFF IN ERROR, against CHAS. B. TEASLEY, ET AL., Board of Registrars of Montgomery County, Alabama.	Application for Mandamus

No. 407.

DAN ROGERS, PLAINTIFF IN ERROR, vs. THE STATE OF ALABAMA.	Murder Case.

MOTION TO CONSOLIDATE AND ADVANCE.

Objections by defendants in error, in above causes, numbered 337 and 338, to the motion made to consolidate and advance them for hearing with cause number 407, by W. A. Gunter, attorney for defendants in error in said causes 337 and 338.

The defendants in error in said causes 337 and 338 respectfully object to the granting of the motion to advance said causes and consolidate them with the criminal case numbered 407 for the following reasons:

1. The said causes 337 and 338, are wholly dissimilar to cause 407, the first being civil causes involving private rights between individuals, and the latter being a criminal cause between the State of Alabama and the defendant therein, who was indicted and convicted of murder.

The principle of consolidation is impossible of operation when the parties are different and the causes of action are different and the questions different. Here the causes are wholly distinct in every feature. The judgment in case number 407 was one of conviction at the instance of the State of the plaintiff in error of a murder; in number 337, the judgment sought was damages in favor of the plaintiff in error in that suit, for alleged wrongful official action of the defendants in error in that case; while in the third case, number 338, a mandamus is sought by the plaintiff in error to compel official action by the defendants in error in that case.

It is evident that these multifarious cases, distinct as to parties and the nature of the proceeding, do not fall within the rule of Revised Statutes sec. 921, nor of the rule of the English practice as to consolidation.

Mutual Life Ins. Co. v. Hillmon, 145 U. S., 285.

2. By reference to the decision of the State Court in cases number 337 and 338 shown in 33 So. Rep., 819-20, as well as in the Records on file, it will be seen that no federal question was actually decided. If the cases were disposed of below without passing on such a question, nothing short of a trial of these cases can determine whether or not such a question will be decided in this court, for it is clear that if the judgment of the lower court may rest, and was decided on a non-federal question, the judgment will not be disturbed.

New Orleans v. N. O. Water Works Co,, 142 U. S., 84.

It cannot, therefore, be said that all or any of these cases present *the* same question for consideration, although it may be possible that the same question might with others, be presented in each case.

3. The questions presented cannot be said to be of public interest requiring advancement of the causes on the trial docket. We know of no public interest that will be served by an early judgment in causes number 337-8, and if there is any, in a speedy trial of the criminal cause number 407, it does not apply to the civil cause number 337-8.

The defendants in error in the latter causes, therefore, respectfully object to any association of their cases with 407, as well as to any advancement on the docket.

M. H. Garrison

Attorney for Appellees,
In cases No. 337 and 338.

Supreme Court of the United States

October Term 1903.

Nos. 337, 338.

JACKSON W. GILES, PLAINTIFF IN ERROR.

vs.

CHARLES B. TEASLEY, WILLIAM A. GUNTER, JR., AND C. JEFF HARRIS, AS THE BOARD OF REGISTRARS OF MONTGOMERY COUNTY, ALABAMA, DEFENDANTS IN ERROR.

Argument of W. A. Gunter, for Defendants in Error.

STATEMENT OF THE CASES.

Case number 337 is an action for damages brought by the plaintiff in error against defendants in error for refusing him registration as an elector in the State of Alabama, upon the allegation that the refusal was based entirely on the ground that the plaintiff was a negro. The complaint was dismissed on demurrer, and the judgment being affirmed in the Supreme Court of the State, a writ of error was sued out from this court to reverse the ruling of the State Court.

Case number 338 is an application for mandamus to the State Court in Alabama requiring the Board of Registrars of electors for Montgomery county to admit the applicant on the list of registered voters. The application was dismissed on demurrer, and the judgment being affirmed in the Supreme Court, the case is also brought here by writ of error.

In each of the above cases the claim of the plaintiff in error is based on the fact and allegation that the provisions of the New Constitution of Alabama, comprehending sections 180, 181, 183, 184, 185, 186, 187, and 188 of Article 8 under which the Board of Registrars was constituted and appointed, were repugnant to the Constitution of the United States and void.

LAW POINTS.

1. The Fourteenth Amendment of the Constitution and the statutes to enforce its provisions, relate only to civil rights.

Slaughter House Cases, 16 Wall., 36;
Strauder v. West Virginia, 100 U. S., 303–6;
Gibson v. Mississippi, 162 U. S., 566;
Virginia v. Rives, 100 U. S., 313;
Williams v. Mississippi, 170 U. S., 213.

a. Either, to "the privileges or immunities of citizens of the United States."

b. Or, the right of "life, liberty and property," unless taken away by "due process of law."

c. Or, "the equal protection of the laws."

Authorities *supra*.

2. The provisions of same amendment "all have reference to State action exclusively, and not to any action of private individuals."

Virginia v. Rives, 100 U. S., 318.

3. While under the fifth section of the Amendment Congress "may enforce the prohibitions whenever they are disregarded by either the Legislature, the Executive, or the Judicial Department of the State," it is plain that the action of Congress to enforce a limited power cannot extend beyond the *power granted*.

4. The Fourteenth Amendment not only does not undertake to deal with political rights but in the second section expressly contemplates that the privilege of voting may be denied at the pleasure of the State, attaching, however, a penalty in the way of a reduction of representation. This demonstrates, as frequently decided, that the prohibitions of section one of the amendment have no reference to political rights, and, of course, that the authority of Congress, given by the fifth section, is limited by the second section.

5. As to the Fifteenth Amendment, it is limited to a single matter, and the power of Congress to enforce the same, "by appropriate legislation," of course, is also restricted to that single item. The prohibition of this amendment, like those of the Fourteenth, refers to governmental action of the United States or by the State, "and not to any action of private individuals."

Virginia v. Rives, 100 U. S., 318;
Slaughter House Cases, 16 Wall., 37–77–126.

6. The Fifteenth Amendment itself can never be violated except by a State or the United States, and not by them until there is a denial or restriction by some *law* of the right to vote.

United States v. Harris, 106 U. S., 638;
United States v. Cruikshank, 1 Woods, 308; 92 U. S., 542;
Virginia v. Rives, 100 U. S., 313.

7. To bring a statute within the operation of the Constitution it must appear to be passed under a grant of power contained therein, United States v. Harris, 106 U. S., 35–6, and to bring a case within a statute of the United States, it must appear that the right, the enjoyment of which is interfered with, is one granted or secured by the Constitution or laws of the United States. If it does not so appear, the charge is not made out.

U. S. v. Cruikshank, 92 U. S., 549–555.

8. Everything essential to make out a case must be charged positively and not inferentially. *Ib.*, 556–8.

9. On every writ of error to a State Court the doctrine of *res judicata* is called in question. It must appear by all the certainty and according to the principles, of *res judicata*, that a federal right was directly or necessarily involved and decided adversely to the plaintiff in error claiming such right. And consequently if there are several questions involved upon one or more of which the judgment may rest without the decision of a federal question, this court is without jurisdiction to hear the case.

New Orleans v. New Orleans Waterworks, 142 U. S., 84;
12 Notes U. S. Reps., 64;
Capital Bank v. Cadiz Bank, 172 U. S., 425;
Russel v. Place, 94 U. S., 606.

ARGUMENT.

I. We will first discuss cause number 337, which is an action on the case for damages against the persons constituting the Board of Registrars, for refusing to register the complainant below, and to issue a certificate of qualification as an elector in the State of Alabama, whereby he was deprived of the right to vote guaranteed under the Fifteenth Amendment to the Constitution.

The complaint went out on demurrer in the lower court, and the judgment was affirmed in the Supreme Court.

The primary question, therefore, is, whether there is any non-federal question upon which the judgment of the State Court can rest. If there is, the judgment will not be disturbed, even though a federal question was in the case and might have been wrongly decided.

New Orleans v. New Orleans Waterworks, 142 U. S., 84;
12 Notes to U. S. Reps., 64.

Now the plaintiff below, in his declaration, avers that he "on the 13th day of March, 1902 . . . . did make application in due form to said defendants sitting as the Board of Registrars of Montgomery county, to be registered . . . . and complied with all the reasonable and legal requirements of said Board, but that they arbitrarily and without justification or excuse wrongfully and wilfully refused to register the plaintiff . . . . for no other reason than his race and color," etc.

If the defendants below were amenable to a suit of this character, it must be conceded that they can only be charged according to rules pertaining to a due course of proceeding at law. A pleading charging them with official misconduct and a wilful violation of law ought to contain as to certainty the substantial requirements of an indictment. And, therefore, the facts should be stated to enable the court for itself to determine whether or not they are sufficient in law to support a conviction if one should be had.

United States v. Cruikshank, 92 U. S., 458;
Virginia v. Rives, 100 U. S., 332.
Harrison v. Nixon, 9 Pet., 503.

The law under which defendants proceeded restricted registration to certain classes of persons, on application made, and on a hearing of such application, including an examination of the applicant and witnesses.

There is a demurrer in, that the complaint does not set forth and state the facts and proceedings on such application, so as to enable the court to judge whether or not the facts make out the charge. The complaint says, application was made in "due form," but the form is not set out. It is manifest that the plaintiff in applying for registration would have to bring himself within one of the three classes allowed to register under section 180 of the Constitution, and as neither the application nor its contents is set out, the jurisdiction of the Board of Registrars to act in his behalf does not appear to have been raised, and the application might have been refused on that ground. It is further said that plaintiff complied with all reasonable and legal requirements, but no facts are stated. The demurrer was sustained generally, and it is impossible to say the judgment of the State Court does not rest on this ground.

Russel v. Place, 94 U. S., 606.

And thus no Federal question was, necessarily, or in fact, raised and decided.

II. In the next place, the point was raised by the demurrer that the defendants below, in the matters complained of, were acting

judicially and that they were not liable to a personal action calling in question their conduct. It is absolutely impossible, upon the doctrine of *res judicata*, so often and clearly promulgated by this court, to say, that the judgment of the state court dismissing the complaint of the plaintiff in error may not and does not rest upon this point. If it does, there is no federal question raised and certainly decided adversely to the plaintiff in error, and this court is without jurisdiction. That the defendants in error were acting judicially is certain, both from the nature of the proceeding and the averments of the declaration, and from the construction of the statute under which the defendants proceeded by the State Court, which this court accepts as correct. The Supreme Court of Alabama, in this case, says the action of the defendants under the Constitution in enrolling electors was judicial.

Record, page 12.

It is said in Jefferson Bank v. Kelly, 1 Black, 436, 443, that there is a single exception to the rule that this court will adopt the State construction of its statutes and Constitution, and that is "when it has been called upon to interpret the contracts of States, etc." See also Mobile & Ohio R. R. v. Tennessee, 153 U. S., 492–3. But if this court is not so restricted in this case, nevertheless a view of the nature of the proceeding is conclusive that the Registrars were acting judicially. They were required to take the judicial oath, and they constituted an organized board, had authority to administer oaths, to hear and determine a case made on evidence adduced, with the right of appeal to higher courts. They had to consider and determine whether the applicants for registration had the qualifications prescribed by section 180 of the Constitution, in a proceeding in all respects judicial and in which false swearing was perjury. Constitution of Alabama, Sec. 180–186. They thus were judges, and their action judicial, and not to be called in question by a suit against them personally for damages.

17 Ency. of Law, 2 ed., pp. 726, 727, 728;
Flournoy v. City of Jeffersonville, 79 Am. Dec., 468;
Bradley v. Fisher, 13 Wall., 335;
7 Notes to U. S. Reps., 712;
Busteed v. Parsons, 54 Ala., 393–401.

The only question then on this point is, whether the Fourteenth and Fifteenth Amendments, or either of them, or the statutes enforcing, as appropriate legislation, their provisions, overturn the rule of general law, that a judge is not liable *civiliter* for judicial conduct.

We humbly submit that the Constitution does not, and not only that the statutes do not, but that they could not do this.

So far as the Fourteenth Amendment is concerned, the first section, which is the the only one possible to be invoked, is confined: first, to a definition of who are citizens of the United States; second, to a prohibition on the States "to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;" third, to a declaration that no State shall deprive any person of life, liberty or property without due process of law; and fourth, that no State shall deny to any person within its jurisdiction the equal protection of the laws.

It requires no argument to point out that none of these provisions give any color to the proposition that judges are liable *civiliter* to individuals for official misconduct. These provisions "all have reference to State action exclusively and not to any action of individuals."

Virginia v. Rives, 100 U. S., 318;
United States v. Harris, 106 U. S., 639.

So far as the Fifteenth Amendment is concerned, the same argument precisely applies, only it is a prohibition not only on the States, but the United States, to deny or abridge the right to vote, on account of race, color or previous condition of servitude. There is not here then, any right to contend that judges are made liable for official misconduct as here is insisted.

So far as the statutes of the United States are concerned, it is supposed that Rev. Stat., Sec. 1979 is the only one that can, or will be, invoked in this behalf.

In Hemsley v. Myers, 45 Fed., 283, it is said of this section: "No new mode of proceeding is enacted, and no new right created by this section. As it now stands in the Revised Statutes, it may be properly denominated a 'declaratory' statute."

United States v. Cruikshank, 92 U. S., 542;
United States v. Harris, 106 U. S., 638.

It is impossible to suppose that the statute was intended to take away from State courts the right to pass judicially upon any question arising before them within their jurisdiction. The very fact that there is a right of appeal from the highest court of the State to this court, shows that the right of the State court is unimpaired. But if the court and jury trying a case in which a citizen was deprived, by their verdict and judgment, of a "right, privilege or immunity secured by the Constitution and laws," could be sued for damages under Rev. Stat., Sec. 1979, appeals would be useless, and the State

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governments would be destroyed. Instead of appealing in this case, the judges of the Supreme Court could have been sued personally and made to pay damages for not understanding the law as a jury might. The statute, if it had been intended to have any such construction, would certainly have used more appropriate words so as to include *judges* and *courts* and *juries* acting officially.

But if such words had been in the statute, they would be unconstitutional, for there is no warrant for such a power in the Fourteenth or Fifteenth Amendments, or elsewhere in the Constitution.

It is absolutely certain then, that the defendants in error were acting judicially and within their jurisdiction in all that is charged against them, and are, therefore, not liable to this proceeding. There was a demurrer setting up this point in the lower court; the judgment of the court obviously might rest on this non-federal question, and, therefore, this court is without jurisdiction.

But if this court had jurisdiction and was called upon to try the question on the merits, it could not possibly be held that a judicial officer or court is liable *civiliter* for official conduct within his jurisdiction.

Busteed v. Parsons, 54 Ala., 393, and authorities there cited.

III. No federal question was raised in the case and adversely decided.

It seems impossible to discover the adjudication of any federal question in the State court adversely to the right claimed, which is a *sine qua non* to the jurisdiction of this court by writ of error to State courts.

Ins. Co. v. The Treasurer, 11 Wall., 208;
Capital Bank v. Cadiz Bank, 172 U. S., 430;
Rev. Stat., Sec. 709;
Scott v. Jones, 5 How., 375;
Michigan Central R. R. v. Michigan S. R. R., 19 How., 379.

The demurrer in the State court which disposed of the case, did not controvert any federal right.—Record 5. But only raised questions of procedure as to sufficiency of pleading and of general jurisprudence as to the individual liability of persons acting officially.

On the appeal the State court affirmed the judgment of the lower court; the only question possibly before the Supreme Court was error *vel non* in the rulings of the lower court, its jurisdiction being appellate and not original. And as no issue involving a federal question was before the lower, it is impossible that the issues could have been any broader in the Supreme Court. And if the opinion of the Supreme Court be taken as part of the Record, (which it is not in this case, since no law requires opinions to be rendered, 1 Rose's United

States S. C. Dig., 950, Sec. 514) it will be seen that the court did not decide, as indeed it could not on the record decide, any federal question adversely to the plaintiff in error.—Record 12.

That court simply said to the plaintiff in error: If your theory is correct, that the constitutional provisions under which defendants were constituted a board of registrars were void, then they had no authority to register you, and you cannot complain of their refusal; and on the other hand, if not void, the action of defendants was in its nature judicial, and they would not be liable civiliter.— Record 12.

Is there any federal question here decided adversely to the claim of right set up by the plaintiff, and does the Record show it as a certainty and not by doubt or conjecture?

Upon which horn of the dilemma will the plaintiff in error hang the decision of the Supreme Court? He certainly will not select the first, that the Constitution is void, as contended for in the complaint, for then the decision would be in favor of the federal right, viz: that the constitutional requirements were obnoxious to the Fifteenth Amendment, and void, and the question would be one of error *vel non* in refusing registration under a void ordinance, which would not be within the jurisdiction of this court.—Scott v. Jones, 5 How., 375, *supra*.

On the other hand, if he insists that the case went off on the point that the defendants below were acting judicially and were not liable civiliter for their judgment, it would not be a federal question, but one of general law, which would be unavailing to confer jurisdiction on this court. That is, unless it be contended and held, that the Revised Statute, § 1979, under which the action was brought, includes the judges and juries of the State court in their consideration and determination of all individual rights of citizens; which would render the statute unconstitutional, because it would be subversive of the State governments. It would not be appropriate legislation for the protection of the rights of citizens under the Constitution of the United States.

But the plaintiff has not the right to select the point upon which the decision below went off. The record must do that for him, and it must not leave it to doubt or conjecture, but must show it to that degree of certainty required in a plea of *res judicata*, as to which it is well settled, that if a dismissal may rest upon one of several grounds there is no right to confine it to any particular ground, and if an appeal must be based on a decision of a particular ground, when other questions equally may have been the point decided, the predicate of appeal is wanting.

Ins. Co. v. The Treasurer, 11 Wall., 204;
Connecticut, etc. v. Woodruff, 153 U. S., 689;
Hammond v. Johnston, 142 U. S., 73;
New Orleans v. New Orleans W. W. Co., 142 U. S., 79;
Delaware Nov. Co. v. Reybold, 142 U. S., 636.

IV. The statute, Rev. Stat., § 1979, under which the action is brought, is unconstitutional, and there is no basis for the suit, and if not unconstitutional, has no application to this suit.

It is held in United States v. Harris, 106 U. S., 629, and Baldwin v. Franks, 120 U. S., 678, that Rev. Stat., § 5519, which is a law to punish a violation of the third clause of Sec. 1980, was unconstitutional, and in United States v. Reese, 92 U. S., 214, Revised Statutes, §§ 2007, 2008, and 5506, were under consideration and held to be unconstitutional because they were too broad for the powers given by the Constitution to Congress; that they were not appropriate legislation. Under the same principles, we think it must be held that Rev. Stat., § 1979 is also unconstitutional.

It says, that "*every person*, who under color of any statute, ordinance, etc., of any State or territory, subjects or causes to be subjected, any citizen of the United States to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured, etc."

This statute authorizes suits against and fixes a liability on every judicial officer of a State for any judgment he may render in proceedings before him which involve a right or privilege under the Constitution and laws, and which may be held to be *erroneously* decided by the court and jury subsequently trying him. Such a law is unwarranted by any power in the Constitution. It would destroy the States if it could be upheld in its terms.

The question then is, can it be limited by separation and construction, so as to make it valid in part.

There is no separable part in the statute; nor can construction, to make it apply partially and not universally, restrict its plain words "any person," which apply to the judiciary as much as to any other persons. The courts cannot stand within the "broad net" and decide who shall be let out and who shall be held for punishment; that would be legislation.

United States v. Reese, 92 U. S., 214;
United States v. Harris, 106 U. S., 629;
Baldwin v. Franks, 120 U. S., 678.

But if we are wrong in the supposition that the statute is unconstitutional, it has no application to a case of this kind.

In Holt v. Indiana Manufacturing Co., 176 U, S., 68, it is held

that this section of the Revised Statutes, with others mentioned, are provisions brought forward from the act of April 20, 1871, entitled "An Act to enforce the provisions of the Fourteenth Amendment to the Constitution of the United States and for other purposes," and that if still in force "refer to civil rights only," hence were inapplicable in other cases.

The right involved in this case is a political, and not a civil right. The claim is one to be admitted to registration as an elector in the State of Alabama. This is not a civil, but a political right, and, therefore, section 1979 of the Revised Statutes has no application to this case.

See also Hemsley v. Myers, 45 Fed., 290.

V. The claim then must rest, so far as any federal question is concerned, wholly on the Fifteenth Amendment of the Constitution, and upon the common law effect of its declaration, for it is conceded and is well settled by the decisions of this court, that the denial of a political right may be the subject of a common law action as much as the denial of any other right.

Giles v. Harris, 189 U. S., 485;
Wiley v. Sinkler, 179 U. S., 58;
Swafford v. Templeton, 185 U. S., 487.

But the declaration of the Fifteenth Amendment refers to governmental action only, and is a restriction as to the right in the State or United States to deny or abridge the right of voting on account of race, color or previous condition of servitude.

In Logan v. United States, 144 U. S., 293, this court says, after reviewing all previous decisions on the subject:

"The whole scope and effect of this series of decisions is that, while certain fundamental rights, recognized and declared, but not granted or created, in some of the Amendments to the Constitution, are thereby guaranteed only against violation or abridgment by the United States, or by the States, as the case may be, and cannot, therefore, be affirmatively enforced by Congress against unlawful acts of individuals; yet that every right, created by, arising under or dependent upon, the Constitution of the United States, may be protected and enforced by Congress by such means and in such manner as Congress, in the exercise of the correlative duty of protection, or of the legislative powers conferred upon it by the Constitution, may in its discretion deem most eligible and best adapted to attain the object."

This quotation if taken to substantially express the whole law on the subject.

There is no statute operating in this case, and the Constitution (Fifteenth Amendment) operating *proprio vigore* only nullifies laws

and Constitutions opposed to its terms. Supposing then, the Constitution of Alabama to be a violation of the Constitution of the United States, the effect would be to nullify and discharge the entire registration program embodied in the instrument.

Ex parte Yarbrough, 110 U. S., 651–665.

And as a consequence would do away with all right to demand, and all necessity for registration by the defendants.

Giles v. Harris, 189 U. S., 475.

But, on the other hand, if there was a right to demand registration, and if the defendants were liable *civiliter* for their conduct, all of which is denied, still it would be no more than a denial by a court or individual of a right, political, it is true, but of no more importance than any civil right. The source of the right in such case, it is true, may be traced to the Constitution of the United States, but the plaintiff having gone into the State Court, there is no right to review by this court the action of the State Court, unless it is shown by the record that the State Court in fact decided against the validity of the claim. And this, we insist again, the record disproves.

This court can only act upon the cases made by the pleadings, and the case here simply discloses a judgment which must necessarily rest upon grounds not touching the construction of the Constitution of Alabama or any right claimed in opposition to its terms.

And it is accepted, as an undeniable proposition, that the "Denials of equal rights in the action of the judicial tribunals of the State, are left to the *revisory* powers of this court."

Virginia v. Rives, 100 U. S., 322;
Strauder v. West Virginia, ib., 310;
In re Wood, 140 U. S., 278;
Gibson v. Mississippi, 162 U. S., 565–583.

And, therefore, if the right in this case sought to be vindicated, rested upon a statutory declaration of a liability on the part of judges, it would make no difference, for a statute holding them liable *civiliter* would not be "appropriate legislation."

And if the defendants were not exercising a judicial office, as it is held by the Supreme Court of Alabama they were, still the revisory power of this court, which is alone invoked, cannot be called into exercise whether the liability rest upon a statute or the common law, unless the record affirmatively shows that the judgment of the lower court rests upon the judicial denial of a right to which the plaintiff in error is entitled under the Constitution and laws of the United States, which we have seen it does not do.

VI. If the Constitution of Alabama was on trial, there is noth-

ing in it which is opposed to the Fifteenth Amendment of the Constitution of the United States.

If we look at either the nature of political societies, or their history, we see that they are liable to grave mistakes. But it cannot be denied that, if the blind effort of instinct is towards the attainment of the best results, and thus right, the considerate action of high intelligence is not moved by like necessities to the same end.

The State action in this affair thus cannot be denied the motive of beneficence, that is, a purpose of security and protection to the people. The provisions of the Constitution of the United States are the only laws it cannot transgress.

There is no question of abstract right involved. The privilege of voting is purely political, depending on the will of the government of the particular society. We know that in many of the States of the Union there is no sort of natural equality observed as to the right to vote.

It may in general be affirmed that in no country is the government an absolute democracy; and history shows that between the limits of *Cæsarism* and unqualified admission to the electoral power, the safety of human rights is found, and that a close proximity to either extreme is alike to be avoided as dangerous.

No one can affirm that intelligence and moral elevation are not desirable, if not necessary, qualifications for electors, nor that these have any necessary or peculiar connection with a dark complexion and a previous condition of servitude. On the contrary, the slow progress of the colored races generally, not to refer particularly to the sad experience in this country, demonstrates that there seems to be a radical moral intellectual difference between the races of the earth, not to the credit of the darker complexion.

But the conduct of man is rarely shaped from an *a priori* study of the philosophy of history further than the teachings of his own limited experience.

And it is well known that it was not philosophy, but political and party passion, honest it may be assumed to have been, but not the less open to error on that account, that put upon the country negro suffrage. And it is not philosophy, beyond personal experience of its necessity as a law of life, that has forced those exposed to its dangers, "to sweep the field of expedients" to mitigate and avoid the horrors of negro domination.

No expounder of constitutional law can say, that the power which is limited in its discretion, as to differentiation for electoral purposes only by the natural distinctions of race and color, and the artificial

accident of previous condition of servitude, is not at perfect liberty, so far as the power and duty and authority of this court is concerned, to rest its classification in other respects upon rational or the most whimsical distinctions.

This is not a court for the correction of errors of judgment in that regard.

The State of Virginia, or New York, might with impunity say, that no one should vote who was not a native of the State, and thus exclude the votes and defeat the power of the foreign element. If the majority in the latter State was controlled by a contingent from Africa or China, instead of from Ireland, would the law be within the terms of the prohibition of the Constitution?

It could hardly be so determined. The prohibition in such case would be levelled against persons of foreign birth and not against races.

If experience satisfies the intelligence and law making power of the country, that certain moral deficiencies or certain moral qualities which in general appertain to a particular *race* or to a *previous condition of servitude*, rendering such persons unfit for electors, and there is a prohibition and thus impossibility of differentiating the people by *racial* distinctions or by *color* and *historical distinctions* of previous servitude, could it be fairly held that a discrimination for electors founded on *other characteristics than those of race or color* and a condition of *previous servitude*, was really and in fact founded on color and a previous condition of servitude?

Such a holding would, it seems, be a contradiction of terms. The objectionable feature must be found in the terms of the law or Constitution itself.

The limitations of the Constitutional Amendment is the expression of a special grant or power of attorney to make the particular limitations; and there is no authority to extend the plain meaning of the words used so as to embrace conditions not fairly within their scope.

Prigg v. Commonwealth, 16 Pet., 613;
Lake County v. Rollins, 130 U. S., 670.

The very fact that the discriminations prohibited, are restricted to race and color, and to previous servitude, leaves untouched the absolute right to discriminate as to electors in all other respects which would have been permissible without restriction. Thus, as is said in Ratcliff v. Beale, 20 So. Rep., 865, the restriction as to color of races is no inhibition or discrimination as to moral characteristics, though it appertains in a greater degree to one race than another.

Williams v. Mississippi, 176 U. S., 222.

Now let us examine the clauses of the State Constitution which are claimed to be obnoxious to the Federal Constitution.

We will not refer to the permanent plan for the registration after January, 1903, for it relates wholly to educational and property qualifications, which, of course, no one will pretend are within the constitutional restriction, notwithstanding they will or may operate to exclude more colored citizens than white in many counties where the negroes are in the majority, or where more of them are without the required qualifications.

The whole argument against the Constitution must be directed to the temporary plan of registration set forth in section 180. It must be premised, however, that the legislation of the State, as to the intent and purpose and effect of the laws, must be gathered from the terms of the statute or Constitution under consideration. While the history and circumstances of the enactment of Constitutions may be looked at, it is only for the purpose of understanding and applying the words themselves where there is obscurity or doubt about the real meaning.

Bleaker v. McPherson, 146 U. S., 27;
Ogden v. Saunders, 12 Wheat., 332;
Lake County v. Rollins, 130 U. S., 670.

No legislative body can be held responsible for individual declarations of members when it is not evident from the laws themselves that the particular matter has been incorporated in the enactment. The *corpus delicti* is wanting and there can be no conviction, when the law does not disclose "the bloody deed."

Fletcher v. Peck, 6 Cranch, 87;
Dodge v. Woolsey, 18 How., 374;
United States v. Des Moines, 142 U. S., 545;
1 Notes to U. S. Rep., 305;
Williams v. Mississippi, 170 U. S., 222;
Lake County v. Rollins, 130 U. S., 670.

Section 182 disqualifies for certain crimes enumerated;—this, of course, is not objected to.

Section 178 requires a certain residence and registration, and the payment of all poll taxes for the year 1901 and subsequent years, as conditions for voting. This also cannot be objected to.

Section 180 prescribes the classes of persons who may be admitted to registration. Three classes of citizens are enumerated who are qualified to register.

The first two comprise "persons who have honorably served in the land or naval forces of the United States" in the war of 1812, the war with Mexico, or any war with Indians, or in the war between the

States, or with Spain, or who honorably served in the land or naval forces of the Confederate States or of the State of Alabama in the war between the States, and descendants of such persons, and of those "who honorably served in the land or naval forces of the United States in the war of the American Revolution."

The third class comprises, "All persons who are of good character and who understand the duties and obligations of citizenship under a republican form of government."

Let us consider the last clause first. What imaginable objection can be raised to this provision? Is there anything in it that refers directly or indirectly to race or color or previous condition of servitude? Not a word. Are the requirements of the provision unusual or improper, and if they were, what difference would it make, if they touch not the inhibitions of the Constitution?

Ought any person to be an elector who is not of "good character," and who does not understand the duties and obligations of citizenship under a republican form of government? No man can answer this in the affirmative.

Here then, is a provision under which any citizen of any race or color or previous condition of servitude worthy to be admitted as an elector may be registered.

It has been held by this court that provisions of exclusion predicated on bad character, or admission to privileges on "good character," are not discriminations against races.

Williams v. Mississippi, 170 U. S., 222;
In re Wood, 140 U. S., 284;
In re Jugiro, ib., 291-298.

In the two cases last referred to, the test for a juryman was not only that he should be of good character, but be 'intelligent." In the case of the admission of foreigners to citizenship, it is required that they should have lived a long time in the country, and that they must show that they are of good moral character, and that they are attached to the principles of the Constitution, and well disposed to the welfare and happiness of the State.

Revised Statutes U. S., § 2165.

Is the requirement in this section of the Constitution any more stringent; and, especially, how can it be said to discriminate against any person on account of race, color or previous condition of servitude?

This clause must be accepted as proper, if this court had a general revisory power over the judgment of the Alabama Constitutional Convention. There could be no dissent to it on any terms. And under its provisions every citizen, no matter what his race or

color may be or previous condition of servitude may have been, is qualified to register, so far as those matters are concerned.

As to the other two clauses, it is not deemed necessary to make any extended remarks. They do not in terms discriminate against any person on account of race, color or previous condition. Under their provisions colored persons and persons who were slaves may register. But if they happen not to have been soldiers or sailors, or to be the descendants of such, and therefore are unable to register under these provisions, they are not excluded, they are simply referred to another door of easy access through which any one worthy to enter is heartily welcomed.

The Constitution must be taken on its own language and as a whole, and if ample provision is made for the acceptance and entertainment of all worthy to enter, there is clearly no room to complain that complimentary tickets are distributed to soldiers and sailors and their children and grandchildren irrespective of race, color or previous condition.

Any objection to such a provision certainly cannot be founded on the Fifteenth Amendment.

But it may be urged that the purpose of the law is shown in its administration to be unconstitutional.

In this case all we have to defend is a civil action, concerning only the defendants and plaintiff below. This is a suit for damages for a particular wrong alleged to have been done to the plaintiff. The defendants below have nothing to do with other people or parties. They received their commission as judges of electors after the work of framing the Constitution had been accomplished, and the work had been accepted. The only question is, what wrong have *they* done in the case before the court?

If they committed any wrong or error in the administration of the law, the law cannot be blamed for the administration; and their wrong, whatever it may have been, can only be corrected by the revisory powers of this court, in the original suit or application for registration.

The rule is definitely settled that where the objection is not founded on defects of the law itself, but relates to its administration only, the remedy is only through the revisory powers of the courts of the United States after the State courts have decided against the claim or right founded on the Constitution and laws of the United States.

In re Wood, 140 U. S., 284;
Gibson v. Mississippi, 162 U. S., 583–4;
In re Frederick, 149 U. S., 77;
Virginia v. Rives, 100 U. S., 321–2.

The bad administration of *other* persons, if there has been such, defendants in error are not accountable for; nor is the law itself to be blamed for administration not traceable to its words.

In the case of Yick Wo v. Hopkins, 118 U. S., 356, the objectionable ordinance gave an absolute and unqualified discretion, "without reason and without responsibility," to the supervisors to grant or withold a license to conduct the particular business; but here the provisions of the Constitution confer a power to be judicially exercised, as to certain reasonable and proper qualifications relating to the *character* and *capacity* and *disposition* of the applicant, upon a consideration of all the circumstances of each particular case, subject to an appeal to the higher tribunals, including this court in a proper case.

The doctrine of that case, therefore, sustains rather than defeats the Constitutional provisions in question; for the ordinance in 118 U. S., *supra*, was held to be void "on its face," because *it authorized* a vicious administration, while here the language cannot be tortured into any warrant for conduct against Constitutional rights.

Williams v. Mississippi, 170 U. S., 223–4.

When bad administration is unwarranted by any fair interpretation of the language of the Constitutional provision which is impeached, the objection to the law itself is untenable, and whatever wrong may be perpetrated in its administration, must be remedied without calling in question the right and propriety of the supreme power of the State to pass laws which in themselves are not obnoxious to the negations of the Constitution. It seems unnecessary to further consider objections to the Constitution of Alabama in this case. We are unable to see how any Constitutional question is involved, or, if involved, to discover any substantial objection in the power of this court to correct.

We next come to consider case number 338, involving the application to the State Court for a mandamus, compelling the defendants below to register the plaintiff in error as an elector, and "all other qualified members of his race."

The application to the lower State Court after alleging petitioner's citizenship and qualifications as an elector under the Constitution of Alabama, and the denial of his application for registration, avers that sections 180-1-3-4-5-6-7-8 of Article VIII of the Constitution

under which, among other things, the Board of Registrars was constituted and authorized to make registration, were unconstitutional and void, that he has no other adequate remedy than the writ of mandamus, and prays that said sections of the Constitution be declared void, and that an alternative writ of mandamus be issued to the defendant Board of Registrars commanding them to admit him and all the qualified members of his race to registration or show cause against the same.

Record, 7–8.

The petition was demurred to, the demurrer being sustained, an appeal was taken and there was an affirmance, and a writ of error was allowed to this court.

The demurrer is on pages 55-6-7 of the Record; the decree of affirmance and opinion of the Supreme Court will be found on pages 62-3.

On looking at the demurrer, it will be seen that no ground assigned raises for decision any constitutional question whatever. The law of Alabama forbids a decision on any point not specifically designated in a demurrer.

See Code of Alabama of 1896, section 3303, which says: "No objection can be taken or allowed which is not distinctly stated in the demurrer." It was thus impossible for either the lower or Supreme Court to decide any Federal question, for none was raised on the demurrer.

All the grounds of demurrer may be classed under five heads:

1. Those setting up that the plantiff, after alleging that the constitutional provisions authorizing registration, prescribing qualifications of electors and providing for the appointment of a Board of Registrars, and fixing and defining the powers and duties of the board, were null and void, and praying that they be so declared, could not ask for a mandamus to the Registrars to admit him to registration. See grounds of demurrer numbered 1, 2, 3, 4, 5, 7, 13, 14; Record, 55-6-7.

2. Those setting up that the plaintiff had a remedy at law. See grounds numbered 8, 9, 10, Record, 56-7.

3. Those objecting that the plaintiff's petition asked judicial action of a particular nature, and not merely to consider and act on the application. See demurrer numbered 15, Record, 57.

4. That the petition asked for a remedy differing from that prescribed by law which is exclusive. See demurrer number 16, Record 57.

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5. That the petition was too broad in asking for the registration of all other qualified voters of plaintiff's race.

This demurrer was sustained generally. Record, 57. No one thus can say which particular ground was sustained. It is impossible to reverse the judgment of dismissal on demurrer in a court of general appellate power if any ground of the demurrer is good.

McCreary v. Jones, 96 Ala., 592.

The Supreme Court affirmed the judgment below. We have no right to look at the opinion as a part of the Record. See authorities *supra*. But, if we consider the opinion, it appears that the court expressly avoided any decision on the validity of the Constitution of Alabama, and held that the plaintiff in error "could not blow hot and cold at the same time," and that by alleging that the Constitution was void and consequently that the commission of the Registrars thereunder was also void, and praying that they be so declared, he was precluded from asking official action against them in this proceeding founded on the validity of the Constitution. Record, 63.

This is precisely the dicision of this court in the case of Giles v. Harris, 189 U. S., 475. But there is no right to refer the decision to this point. The judgment affirms generally the decree of the lower court and, therefore, may be referred for support to any point of the demurrer not involving a federal question.

But, really, no ground of demurrer involved a federal question and thus it is impossible for this court to entertain jurisdiction of this case.

The plaintiff in error is, of course, entitled to redress for any injury he has sustained, but only according to due course of law. He is entitled to mandamus only when he shows he has a right and that there is no other remedy.

Ex. parte Bradley, 7 Wall., 364–376;

Virginia v. Rives, 100 U. S., 323.

Here no right was shown, for the plaintiff alleged that the entire proceeding for registration was void.

Record, 63;

Giles v. Harris, 189 U. S., 475.

And in the next place, if there had been no such allegation, there was a plain remedy by appeal to the Circuit Court if he deemed himself wrongfully refused registration, which precluded any right to a mandamus.

Ex. parte State Bar Association, 92 Ala., 116.

See Constitution, clause 6, of Section 186, which provides that:

"Any person to whom registration is denied shall have the right

of appeal, without giving security for costs, within thirty days after such denial, by filing a petition in the Circuit Court or court of like jurisdiction held for the county in which he seeks to register, to have his qualifications as an elector determined," etc.

But to avoid this the petitioner says, he could not get a fair trial in the Circuit Court because negroes are excluded from the juries in these courts, and that the court did not have time to dispose of his case.

We deny that there is any law making this discrimination as to *jurors*, and the court must take notice of the fact that negroes are not so excluded by law.

And if they were excluded by bad administration in petitioner's case it would not be the defect of the law, and particularly of the Constitution, which was subsequent to the statutes, and would only put the party to a timely objection to the *venire* in the Circuit Court, which, if improperly decided, would give this court authority to correct the error through its revisory power.

Carter v. Texas, 177 U. S., 442;
Virginia v. Rives, 100 U. S., 321-2;
In re Wood, 140 U. S., 284.

And as to the objection of the want of time, it would take no more time to try an appeal than the mandamus proceeding.

If the petitioner had been improperly refused registration, and if he had no other remedy, and if every other position taken by the petitioner was correct, still he had no right to a mandamus for the registration of all his race; the petition would be multifarious. He had no right to sue in behalf of anyone but himself, at least the State Court may have so thought and decided. This objection to the petition, therefore, whether well taken or not, may have been the basis of the decision of the State Court.

The Supreme Court of Alabama was correct on general principles of law in affirming the judgment of the lower court, if this court was called upon to pass judgment upon its action. But, if it committed error, this court has no power to correct it as to such questions, and, therefore, is without jurisdiction in this case.

There is no power in this or any court, to enlarge its jurisdiction so as to grant relief contrary to settled methods. If wrong has been done, no doubt "there must be some way of pleading in such case, though the court is not bound to say what it is."

7 Rob. Prac., 1080.

And for this court to depart from the record and undertake to decide any question not distinctly involved in the judgment below

and forming its essential basis, would subvert the judicial system under which its supervision of the State Courts is appellate, and confined to federal questions disposed of adversely to the claimant.

It is suggested as a solution of the whole difficulty, that if the plan of *registration* under the Constitution of Alabama is in violation of the Fifteenth Amendment of the Constitution, the law is simply void and is not in the way of voting when ballots may be offered, and that until a ballot is offered and refused, there is no ground for a private citizen to ask judicial action against the validity of the void law of registration, since until then he is not injured.

Turpin v. Lemon, 187 U. S., 51;

Tyler v. Judges of Registration, 179 U. S., 405.

And, on the other hand, if there was only bad administration of a valid law, the objection should have been made in the course of an appeal provided for in clause 6 of section 186 of the Constitution. It must be presumed the State Court would have corrected any abuse whatever.

There was, therefore, no occasion for, or right to a mandamus.

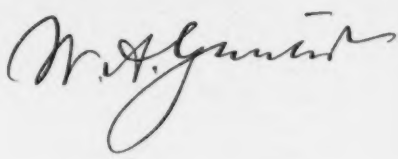
Independent of all the other questions raised, application for the mandamus could not be awarded after the defendants have long since been out of office by expiration of their term, and could not possibly obey the judgment, which this court, it seems, must judicially know here to be the case. The case No. 338 should thus abate.

United States v. Boutwell, 17 Wall., 604;

Mills v. Green, 159 U. S., 651–157;

Century Dig., Vol. 33, Col. 2132, Sec. 52;

ib., Col. 2151, Sec. 60.



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CONSTITUTION

Office Supreme Court U. S.
FILED
JAN 11 1904
JAMES H. McKENNEY,
Clerk

STATE OF ALABAMA

AS ADOPTED BY THE ....

CONSTITUTIONAL CONVENTION

September 3rd, 1901

IN EFFECT NOVEMBER 28, 1901

CONSTITUTION

OF THE STATE OF ALABAMA

AS ADOPTED BY THE

CONSTITUTIONAL CONVENTION

September 3rd, 1901

IN EFFECT NOVEMBER 28, 1901

27557

CONSTITUTION

OF THE

STATE OF ALABAMA,

AS ADOPTED BY THE

CONSTITUTIONAL CONVENTION, SEPTEMBER 3, 1901,

AND IN EFFECT NOVEMBER 28, 1901.

We, the people of the State of Alabama, in order to establish justice, insure domestic tranquility and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God, do ordain and establish the following Constitution and form of government for the State of Alabama:

ARTICLE I.

DECLARATION OF RIGHTS.

That the great, general and essential principles of liberty and free government may be recognized and established, we declare:

1. That all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.

2. That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and that, therefore, they have at all times an inalienable and indefeasible right to change their form of government in such manner as they may deem expedient.

3. That no religion shall be established by law; that no preference shall be given by law to any religious sect, society, denomination or mode of worship; that no one shall be compelled by law to attend any place of worship; nor to pay any tithes, taxes or other rate for building or repairing any place of worship, or for maintaining any minister or ministry; that no religious test shall be required as a qualification to any office or public trust under this State; and that the civil rights, privileges and capacities of any citizen shall not be in any manner affected by his religious principles.

4. That no law shall ever be passed to curtail or restrain the liberty of speech or of the press; and any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

5. That the people shall be secure in their persons, houses, papers and possessions from unreasonable seizure or searches, and that no warrants shall issue to search any place or to seize any person or thing without probable cause, supported by oath or affirmation.

6. That in all criminal prosecutions, the accused has a right to be heard by himself and counsel or either; to demand the nature and cause of the accusation; and to have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to testify in all cases, in his own behalf, if he elects so to do; and, in all prosecutions by indictment, a speedy, public trial, by an impartial jury of the county or district in which the offense was committed; and he shall not be compelled to give evidence against himself, nor be deprived of life, liberty or property, except by due process of law; but the Legislature may, by a general law, provide for a change of venue at the instance of the defendant in all prosecutions by indictment, and such change of venue on application of the defendant, may be heard and determined without the personal presence of the defendant so applying therefor; provided, that at the time of the application for the change of venue, the defendant is imprisoned in jail or some legal place of confinement.

7. That no person shall be accused or arrested, or detained except in cases ascertained by law, and according to the form which the same has prescribed; and no person shall be punished but by virtue of a law established and promulgated prior to the offense and legally applied.

8. That no person shall, for any indictable offense, be proceeded against criminally, by information, except in cases arising in the militia and volunteer forces when in actual service, or when assembled under arms as a military organization, or, by leave of the court, for misfeasance, misdemeanor, extortion and oppression in office, otherwise than is provided in the Constitution; provided, that in cases of misdemeanor, the Legislature may by law dispense with a Grand Jury and authorize such prosecutions and proceedings before Justices of the Peace or such other inferior courts as may be by law established.

9. That no person shall, for the same offense, be twice put in jeopardy of life or limb; but courts may, for reasons fixed by law, discharge juries from the consideration of any case, and no person shall gain an advantage by reason of such discharge of the jury.

10. That no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

11. That the right of trial by jury shall remain inviolate.

12. That in all prosecutions for libel or for the publication of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for

public information, the truth thereof may be given in evidence; and that in all indictments for libel, the jury shall have the right to determine the law and the facts under the direction of the court.

13. That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial or delay.

14. That the State of Alabama shall never be made a defendant in any court of law or equity.

15. That excessive fines shall not be imposed, nor cruel or unusual punishment inflicted.

16. That all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great; and that excessive bail shall not in any case be required.

17. That the privilege of the writ of habeas corpus shall not be suspended by the authorities of this State.

18. That treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and that no person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or his own confession in open court.

19. That no person shall be attainted of treason by the Legislature; and no conviction shall work corruption of blood or forfeiture of estate.

20. That no person shall be imprisoned for debt.

21. That no power of suspending laws shall be exercised except by the Legislature.

22. That no *ex post facto law*, nor any law, impairing the obligations of contracts, or making any irrevocable or exclusive grants of special privileges or immunities, shall be passed by the Legislature; and every grant or franchise, privilege or immunity, shall forever remain subject to revocation, alteration or amendment.

23. That the exercise of the right of eminent domain shall never be abridged nor so construed as to prevent the Legislature from taking the property and franchises of incorporated companies, and subjecting them to public use in the same manner in which the property and franchises of individuals are taken and subjected; but private property shall not be taken for, or applied to, public use,unless just compensation be first made therefor; nor shall private property be taken for private use, or for the use of corporations, other than municipal, without the consent of the owner; provided, however, the Legislature may by law secure to persons or corporations the right of way over the lands of other persons or corporations, and by general laws provide for and regulate the exercise by persons and corporations of the rights herein reserved; but just compensations shall, in all cases, be first made to the owner; and, provided, that the right of eminent domain shall

not be so construed as to allow taxation or forced subscription for the benefit of railroads or any other kind of corporations, other than municipal, or for the benefit of any individual or association.

24. That all navigable waters shall remain forever public highways, free to the citizens of the State and the United States, without tax, impost or toll; and that no tax, toll, impost or wharfage shall be demanded or received from the owner of any merchandise or commodity for the use of the shores or any wharf erected on the shores, or in or over the waters, of any navigable stream, unless the same be expressly authorized by law.

25. That the citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the power of government for redress or grievances or other purposes, by petition, address or remonstrance.

26. That every citizen has a right to bear arms in defense of himself and the State.

27. That no standing army shall be kept up without the consent of the Legislature, and, in that case, no appropriation for its support shall be made for a longer term than one year; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

28. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor, in time of war, but in a manner to be prescribed by law.

29. That no title of nobility or hereditary distinction, privilege, honor or emolument shall ever be granted or conferred in this State; and that no office shall be created, the appointment to which shall be for a longer time than during good behavior.

30. That immigration shall be encouraged; emigration shall not be prohibited, and no citizen shall be exiled.

31. That temporary absence from the State shall not cause a forfeiture of residence once obtained.

32. That no form of slavery shall exist in this State; and there shall not be any involuntary serviture, otherwise than for the punishment of crime, of which the party shall have been duly convicted.

33. The privilege of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult or other improper conduct.

34. Foreigners who are, or may hereafter become, bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property as native born citizens.

35. That the sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty

and property, and when the government assumes other functions, it is usurpation and oppression.

36. That this enumeration of certain rights shall not impair or deny others retained by the people; and, to guard against any encroachments on the rights herein retained, we declare that everything in this Declaration of Rights is excepted out of the general powers of government, and shall forever remain inviolate.

ARTICLE II.

STATE AND COUNTY BOUNDARIES.

37. The boundaries of this State are established and declared to be as follows, that is to say: Beginning at the point where the thirty-first degree north latitude crosses the Perdido river; thence east, to the western boundary line of the State of Georgia; thence along said line to the southern boundary line of the State of Tennessee; thence west, along the southern boundary line of the State of Tennessee, crossing the Tennessee river, and on to the second intersection of said river by said line; thence up said river to the mouth of Big Bear creek; thence by a direct line to the northwest corner of Washington county, in this State, as originally formed; thence southwardly along the line of the State of Mississippi to the Gulf of Mexico; thence eastwardly, including all islands within six leagues of the shore, to the Perdido river; thence up the said river to the beginning; provided that the limits and jurisdiction of this State shall extend to and include any other land and territory hereafter acquired, by contract or agreement with other States or otherwise, although such land and territory are not included within the boundaries hereinbefore designated.

38. The boundaries of the several counties of this State, as they now exist, are hereby ratified and confirmed.

39. The Legislature may by a vote of two-thirds of each House thereof arrange and designate boundaries for the several counties of this State, which boundaries shall not be altered, except by a like vote; but no new county shall be formed hereafter of less extent than six hundred square miles, and no existing county shall be reduced to less than six hundred square miles; and no new county shall be formed unless it shall contain a sufficient number of inhabitants to entitle it to one Representative under the ratio of representation existing at the time of its formation, and leave the county or counties from which it is taken with the required number of inhabitants to entitle such county or counties, each, to separate representation; provided, that out of the counties of Henry, Dale and Geneva a new county of less than six hundred square miles may be formed under the provisions of this article, so as to leave said counties of Henry, Dale and Geneva with not less than five hundred square miles each.

40. No county line shall be altered or changed, or in the event of the creation of new counties shall be established, so as to run within seven miles of the county court house of any old county.

41. No court house or county site shall be removed except by a majority vote of the qualified electors of said county, voting at an election held for such purpose, and when an election has once been held no other election shall be held for such purpose until the expiration of four years; provided, that the county site of Shelby county shall remain at Columbiana, unless removed by a vote of the people, as provided for in an act entitled, "An Act to provide for the permanent location of the county site of Shelby county, Alabama, by a vote of the qualified electors of said county," approved the 9th day of February, 1899, and the act amendatory thereof, approved the 20th day of February, 1899, or by an election held under the provisions of this article.

ARTICLE III.

DISTRIBUTION OF POWERS OF GOVERNMENT.

42. The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

43. In the government of this State, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

44. The legislative power of this State shall be vested in a Legislature, which shall consist of a Senate and a House of Representatives.

45. The style of the laws of this State shall be: "Be it enacted by the Legislature of Alabama," which need not be repeated, but the act shall be divided into sections for convenience, according to substance, and the sections designated merely by figures. Each law shall contain but one subject, which shall be clearly expressed in its title, except general appropriation bills, general revenue bills, and bills adopting a code, digest, or revision of statutes; and no law shall be revived, amended or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is

revived, amended, extended, or conferred, shall be re-enacted and published at length.

46. Senators and Representatives shall be elected by the qualified electors on the first Tuesday after the first Monday in November, unless the Legislature shall change the time of holding elections, and in every fourth year thereafter. The terms of office of the Senators and Representatives shall commence on the day after the general election at which they are elected, and expire on the day after the general election held in the fourth year after their election, except as otherwise provided in this Constitution. At the general election in the year nineteen hundred and two all the Representatives, together with the Senators for the even numbered districts and for the Thirty-fifth district, shall be elected. The terms of those Senators who represent the odd numbered districts under the law in force prior to the ratification of this Constitution, are hereby extended until the day after the general election in the year nineteen hundred and six; and until the expiration of his terms as hereinbefore extended, each such Senator shall represent the district established by this Constitution, bearing the number corresponding with that for which he was elected. In the year nineteen hundred and six, and in every fourth year thereafter, all the Senators and Representatives shall be elected. Whenever a vacancy shall occur in either House the Governor shall issue a writ of election to fill such vacancy for the remainder of the term.

47. Senators shall be at least twenty-five years of age, and Representatives twenty-one years of age at the time of their election. They shall have been citizens and residents of this State for three years and residents of their respective counties or districts for one year next before their election, if such county or district shall have been so long established; but if not, then of the county or district from which the same shall have been taken; and they shall reside in their respective counties or districts during their terms of office.

48. The Legislature shall meet quadrennially at the Capitol, in the Senate chamber, and in the Hall of the House of Representatives, on the second Tuesday in January next succeeding their election, or on such other day as may be prescribed by law; and shall not remain in session longer than sixty days at the first session held under the Constitution, nor longer than fifty days at any subsequent session. If at any time it should from any cause become impossible or dangerous for the Legislature to meet or remain at the Capitol or for the Senate to meet or remain in the Senate Chamber, or for the Representatives to meet or remain in the Hall of the House of Representatives, the Governor may convene the Legislature, or remove it, after it has convened, to some other place, or may designate some other place for the sitting of the respective Houses, or either of them, as necessity may require.

49. The pay of the members of the Legislature shall be four dollars per day, and ten cents per mile in going to and returning from the seat of government, to be computed by the nearest usual route traveled.

50. The Legislature shall consist of not more than thirty-five Senators, and not more than one hundred and five members of the House of Representatives, to be apportioned among the several districts and counties as prescribed in this Constitution; provided that in addition to the above number of Representatives, each new county hereafter created shall be entitled to one Representative.

51. The Senate, at the beginning of each regular session, and at such other times as may be necessary, shall elect one of its members president pro tem thereof to preside over its deliberations in the absence of the Lieutenant-Governor; and the House of Representatives, at beginning of each regular session, and at such other times as may be necessary, shall elect one of its members as Speaker; and the President of the Senate and the Speaker of the House of Representatives shall hold their offices respectively, until their successors are elected and qualified. In case of the temporary disability of either of said presiding officers, the House to which he belongs may elect one of its members to preside over that House and to perform all the duties of such officer during the continuance of his disability; and such temporary officer, while performing duty as such, shall receive the same compensation to which the permanent officer is entitled by law, and no other. Each House shall choose its own officers and shall judge of the election, returns and qualifications of its members.

52. A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members, in such manner and under such penalties as each House may provide.

53. Each House shall have power to determine the rules of its proceedings and to punish its members and other persons, for contempt or disorderly behavior in its presence; to enforce obedience to its processes; to protect its members against violence, or offers of bribes or corrupct solicitation; and with the cncurrence of two-thirds of the House, to expel a member, but not a second time for the same offense; and the two Houses shall have all the powers necessary for the Legislature of a free State.

54. A member of the Legislature, expelled for corruption shall not thereafter be eligible to either House, and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense.

55. Each House shall keep a Journal of its proceedings and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either House on any question shall, at the request of one-tenth of

the members present, be entered on the Journal. Any member of either House shall have liberty to dissent from or protest against any act or resolution which he may think injurious to the public, or to an individual, and have the reason for his dissent entered on the Journal.

56. Members of the Legislature shall, in all cases, except treason, felony, violation of their oath of office, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

57. The doors of each House shall be opened except on such occasions as, in the opinion of the House, may require secrecy, but no person shall be admitted to the floor of either House while the same is in session, except members of the Legislature, officers and employees of the two Houses, the Governor and his secretary, representatives of the press, and other persons to whom either House, by unanimous vote, may extend the privileges of its floor.

58. Neither House shall, without consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting, except as otherwise provided in this Constitution.

59. No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by election by the people.

60. No person convicted of embezzlement of the public money, bribery, perjury, or other infamous crime, shall be eligible to the Legislature, or capable of holding any office of trust or profit in this State.

61. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either House as to change its original purpose.

62. No bill shall become a law until it shall have been referred to a standing committee of each House, acted upon by such committee in session, and returned therefrom, which facts shall affirmatively appear upon the Journal of each House.

63. Every bill shall be read on three different days in each House, and no bill shall become a law, unless on its final passage it be read at length, and the vote be taken by yeas and nays, the names of the members voting for and against the same be entered upon the Journals, and a majority of each House be recorded thereon as voting in its favor, except as otherwise provided in this Constitution.

64. No amendment to bills shall be adopted except by a majority of the House wherein the same is offered, nor unless the amendment with the names of those voting for and against the same shall be entered at length on the Journal of the House

in which the same is adopted, and no amendment to bills by one House shall be concurred in by the other, unless a vote be taken by yeas and nays, and the names of the members voting for and against the same be recorded at length on the Journal; and no report of a committee of conference shall be adopted in either House, except upon a vote taken by yeas and nays, and entered on the Journal, as herein provided for the adoption of amendments.

65. The Legislature shall have no power to authorize lotteries or gift enterprises for any purposes, and shall pass laws to prohibit the sale in this State of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery; and all acts, or parts of acts heretofore passed by the Legislature of this State, authorizing a lottery or lotteries, and all acts amendatory thereof, or supplemental thereto, are hereby avoided.

66. The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the Legislature, after the same shall have been publicly read at length immediately before signing, and the fact of reading and signing shall be entered upon the Journal; but the reading at length may be dispensed with by a two-thirds vote of a quorum present, which fact shall also be entered on the Journal.

67. The Legislature shall prescribe by law the number, duties and compensation of the officers and employes of each House, and no payment shall be made from the State Treasury or be in any way authorized to any person except to an acting officer or employe elected or appointed in pursuance of law.

68. The Legislature shall have no power to grant or to authorize or require any county or municipal authority to grant, nor shall any county or municipal authority have power to grant any extra compensation, fee or allowance to any public officer, servant or employee, agent or contractor, after service shall have been rendered or contract made, nor to increase or decrease the fees and compensation of such officers during their terms of office; nor shall any officer of the State bind the State to the payment of any sum of money but by authority of law; provided this section shall not apply to allowances made by commissioners' courts or boards of revenue to county officers for ex-officio services, nor prevent the Legislature from increasing or diminishing at any time the allowance to sheriffs or other officers for feeding, transferring or guarding prisoners.

69. All stationery, printing, paper and fuel used in the legislative and other departments of government shall be furnished and the printing, binding and distribution of laws, Journals, department reports, and all other printing, binding and repairing and furnishing the halls and rooms used for the meeting of the Legislature and its committees, shall be performed under contract, to be given to the lowest responsible

bidder below a maximum price, and under such regulations as shall be prescribed by law; no member or officer of any department of the government shall be in any way interested in such contract, and all such contracts shall be subject to the approval of the Governor, Auditor and Treasurer.

70. All bills for raising revenue shall originate in the House of Representatives. The Governor, Auditor and Attorney General shall, before each regular session of the Legislature, prepare a general revenue bill to be submitted to the Legislature, for its information, and the Secretary of State shall have printed for the use of the Legislature a sufficient number of copies of the bill so prepared which the Governor shall transmit to the House of Representatives as soon as organized, to be used or dealt with as that House may elect. The Senate may propose amendments to revenue bills. No revenue bill shall be passed during the last five days of the session.

71. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the Executive, Legislative and Judicial departments of the State, for interest on the public debt, and for the public schools. The salary of no officer or employe shall be increased in such bill, nor shall any appropriation be made therein for any officer or employe unless his employment and the amount of his salary have already been provided for by law. All other appropriations shall be made by separate bills, each embracing but one subject.

72. No money shall be paid out of the Treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof; and a regular statement and account of receipts and expenditures of all public moneys shall be published annually, in such manner as may be by law directed.

73. No appropriation shall be made to any charitable or educational institution not under the absolute control of the State, other than normal schools established by law for the professional training of teachers for the public schools of the State, except by a vote of two-thirds of all the members elected to each House.

74. No act of the Legislature shall authorize the investment of any trust fund by executors, administrators, guardians or other trustees in the bonds or stock of any private corporation; and any such acts now existing are avoided, saving investments heretofore made.

75. The power to change the venue in civil and criminal causes is vested in the courts, to be exercised in such manner as shall be provided by law.

76. When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, except by a vote of two-thirds of each House. Special sessions shall be limited to thirty days.

77. No State office shall be continued or created for the inspection or measuring of any merchandise, manufacture or commodity, but any county or municipality may appoint such officers when authorized by law.

78. No act of the Legislature changing the seat of government of the State shall become a law until the same shall have been submitted to the qualified electors of the State at a general election, and approved by a majority of such electors voting on the same; and such act shall specify the proposed new location.

79. A member of the Legislature who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation, association or persons, any money, office, appointment, employment, reward, thing of value, or enjoyment, or of personal advantage or promise thereof, for his vote or official influence, or for withholding the same; or with an understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby; or who shall solicit or demand any such money or other advantage, matter or thing aforesaid, for another as the consideration for his vote, or influence, or for withholding the same; or shall give or withhold his vote or influence in consideration of the payment or promise of such money, advantage, matter or thing to another, shall be guilty of bribery within the meaning of this Constitution; and shall incur the disabilities and penalties provided thereby for such offense, and such additional punishment as is or shall be provided by law.

80. Any person who shall, directly or indirectly, offer, give or promise any money, or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer or member of the Legislature to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as may be provided by law.

81. The offense of corrupt solicitation of members of the Legislature or of public officers of this State, or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers, to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment in the penitentiary; and the Legislature shall provide for the trial and punishment of the offenses enumerated in the two preceding sections, and shall require the judges to give the same specially in charge to the grand juries in all the counties of this State.

82. A member of the Legislature who has a personal or private interest in any measure or bill proposed or pending before the Legislature, shall disclose the fact to the House of which he is a member, and shall not vote thereon.

83. In all elections by the Legislature the members shall vote viva voce, and the votes shall be entered on the Journal.

84. It shall be the duty of the Legislature to pass such laws as may be necessary and proper to decide differences by arbitrators to be appointed by the parties who may choose that mode of adjustment.

85. It shall be the duty of the Legislature, at its first session after the ratification of this Constitution, and within every subsequent period of twelve years, to make provision by law for revising, digesting and promulgating the public statutes of this State, of a general nature, both civil and criminal.

86. The Legislature shall pass such penal laws as it may deem expedient to suppress the evil practice of dueling.

87. It shall be the duty of the Legislature to regulate by law the cases in which deduction shall be made from the salaries or compensation of public officers for neglect of duty in their official capacities, and the amount of such deduction.

88. It shall be the duty of the Legislature to require the several counties of this State to make adequate provision and maintenance of the poor.

89. The Legislature shall not have power to authorize any municipal corporation to pass any laws inconsistent with the general laws of this State.

90. In the event of the annexation of any foreign territory to this State, the Legislature shall enact laws extending to the inhabitants of the acquired territory all the rights and privileges which may be required by the terms of acquisition not inconsistent with this Constitution. Should the State purchase such foreign territory, the Legislature, with the approval of the Governor, shall be authorized to expend any money in the Treasury not otherwise appropriated, and, if necessary, to provide also for the issuance of State bonds, to pay for the purchase of such foreign territory.

91. The Legislature shall not tax the property, real or personal, of the State, counties or other municipal corporations, or cemeteries; nor lots in incorporated cities or towns, or within one mile of any city or town to the extent of one acre, nor lots one mile or more distant from such cities or towns to the extent of five acres, with the buildings thereon, when same are used exclusively for religious worship, for schools, or for purposes purely charitable.

92. The Legislature shall by law prescribe such rules and regulations as may be necessary to ascertain the value of real and personal property exempted from sale under legal process by this Constitution, and to secure the same to the claimant thereof as selected.

93. The State shall not engage in works of internal improvement, nor lend money or its credit in aid of such; nor shall the State be interested in any private or corporate enterprise, or lend money or its credit to any individual, association or corporation.

94. The Legislature shall not have power to authorize any county, city, town, or other subdivision of this State to lend

its credit, or to grant public money or thing of value in aid of, or to, any individual, association or corporation whatsoever, or to become a stockholder in any such corporation, association or company by issuing bonds or otherwise.

95. There can be no law of this State impairing the obligation of contracts by destroying or impairing the remedy for their enforcement; and the Legislature shall have no power to revive any right or remedy which may have become barred by lapse of time, or by any statute of this State. After suit has been commenced on any cause of action, the Legislature shall have no power to take away such cause of action, or destroy any existing defense to such suit.

96. The Legislature shall not enact any law not applicable to all the counties in the State, regulating costs and charges of courts, or fees, commissions or allowances of public officers.

97. The Legislature shall not authorize payment to any person of the salary of a deceased officer beyond the date of his death.

98. The Legislature shall not retire any officer on pay, or part pay, or make any grant to such retiring officer.

99. Lands belonging to or under the control of the State shall never be donated directly or indirectly to private corporations, associations or individuals, or railroad companies; nor shall such lands be sold to corporations or associations for a less price than that for which they are subject to sale to individuals; provided, that nothing contained in this section shall prevent the Legislature from granting a right of way, not exceeding one hundred and twenty-five feet in width, as a mere easement, for railroads or telegraph or telephone lines across State lands, and the Legislature shall never dispose of the land covered by such right of way except subject to such easement.

100. No obligation or liability of any person, association or corporation held or owned by this State, or by any county or other municipality thereof, shall ever be remitted, released or postponed, or in any way diminished, by the Legislature; nor shall such liability or obligation be extinguished except by payment thereof; nor shall such liability, or obligation be exchanged or transferred except upon payment of its face value; provided, that this section shall not prevent the Legislature from providing by general law for the compromise of doubtful claims.

101. No State or county official shall, at any time during his term of office, accept, either directly or indirectly, any fee, money, office, appointment, employment, reward or thing of value, or of personal advantage, or the promise thereof, to lobby for or against any measure pending before the Legislature, or to give or withhold his influence to secure the passage or defeat of any such measure.

102. The Legislature shall never pass any law to authorize or legalize any marriage between any white person and a negro, or a descendant of a negro.

103. The Legislature shall provide by law for the regulation, prohibition, or reasonable restraint of common carriers, partnerships, associations, trusts, monopolies, and combinations of capital, so as to prevent them or any of them from making scarce articles of necessity, trade or commerce, or from increasing unreasonably the cost thereof to the consumer, or preventing reasonable competition in any calling, trade or business.

LOCAL LEGISLATION.

104. The Legislature shall not pass a special, private or local law in any of the following cases:

(1.)—Granting a divorce;

(2.)—Relieving any minor of the disabilities of non-age;

(3.)—Changing the name of any corporation, association or individual;

(4.)—Providing for the adopting or legitimizing of any child;

(5.)—Incorporating a city, town or village;

(6.)—Granting a charter to any corporation, association or individual;

(7.)—Establishing rules of descent or distribution;

(8.)—Regulating the time within which a civil or criminal action may be begun;

(9.)—Exempting any individual, private corporation or association from the operation of any general law;

(10.)—Providing for the sale of the property of any individual or estate;

(11.)—Changing or locating a county seat;

(12.)—Providing for a change of venue in any case;

(13.)—Regulating the rate of interest;

(14.)—Fixing the punishment of crime.

(15.)—Regulating either the assessment or collection of taxes, except in connection with the readjustment, renewal, or extension of existing municipal indebtedness created prior to the ratification of the Constitution of eighteen hundred and seventy-five;

(16.)—Giving effect to an invalid will, deed or other instrument;

(17.)—Authorizing any county, city, town, village, district or other political subdivision of a county, to issue bonds or other securities unless the issuance of said bonds or other securities shall have been authorized before the enactment of such local or special law, by a vote of the duly qualified electors of such county, township, city, town, village, district or other political subdivision of a county, at an election held for such purpose, in the manner that may be prescribed by law; provided, the Legislature may without such election, pass special laws to refund bonds issued before the date of the ratification of this Constitution;

(18.)—Amending, confirming or extending the charter of any private municipal corporation, or remitting the forfeiture

thereof; provided, this shall not prohibit the Legislature from altering or re-arranging the boundaries of the city, town or village;

(19.)—Creating, extending or impairing any lien;

(20.)—Chartering or licensing any ferry, road or bridge;

(21.)—Increasing the jurisdiction and fees of justices of the peace, or fees of constables;

(22.)—Establishing separate school districts;

(23.)—Establishing separate stock districts;

(24.)—Creating, increasing or decreasing fees, percentages or allowances of public officers;

(25.)—Exempting property from taxation or from levy or sale;

(26.)—Exempting any person from jury, road or other civil duty;

(27.)—Donating any lands owned by or under control of the State to any person or corporation;

(28.)—Remitting fines, penalties or forfeitures;

(29.)—Providing for the conduct of elections or designating places of voting, or changing the boundaries of wards, precincts or districts, except in the event of the organization of new counties, or the changing of the lines of old counties;

(30.)—Restoring the right to vote to persons convicted of infamous crimes, or crimes involving moral turpitude;

(31.)—Declaring who shall be liners between precincts or between counties.

104. The Legislature shall pass general laws for the cases enumerated in this section, provided that nothing in this section or article shall affect the right of the Legislature to enact local laws regulating or prohibiting the liquor traffic; but no such local law shall be enacted unless notice shall have been given as required in Section 106 of this Constitution.

105. No special, private or local law, except a law fixing the time of holding courts, shall be enacted in any case which is provided for by a general law, or when the relief sought can be given by any court of this State; and the courts, and not the Legislature, shall judge as to whether the matter of said law is provided for by a general law, and as to whether the relief sought can be given by any court; nor shall the Legislature indirectly enact any such special, private or local law by the partial repeal of a general law.

106. No special, private or local law shall be passed on any subject not enumerated in Section 104 of this Constitution, except in reference to fixing the time of holding courts, unless notice of the intention to apply therefor shall have been published, without cost to the State, in the county or counties where the matter or thing to be affected may be situated, which notice shall state the substance of the proposed law and be published at least once a week for four consecutive weeks in some newspaper published in such county or counties, or if there is no newspaper published therein, then by posting the said notice

for four consecutive weeks at five different places in the county or counties prior to the introduction of the bill; and proof by affidavit that said notice has been given shall be exhibited to each house of the Legislature, and said proof spread upon the Journal. The courts shall pronounce void every special, private or local law which the Journals do not affirmatively show was passed in accordance with the provisions of this section.

107. The Legislature shall not, by a special, private or local law, repeal or modify any special, private or local law except upon notice being given and shown as provided in the last preceding section.

108. The operation of a general law shall not be suspended for the benefit of any individual, private corporation or association; nor shall any individual, private corporation or association be exempted from the operation of any general law except as in this article otherwise provided.

109. The Legislature shall pass general laws under which local and private interests shall be provided for and protected.

110. A general law within the meaning of this article is a law which applies to the whole State; a local law is a law which applies to any political subdivision or subdivisions of the State less than the whole; a special or private law within the meaning of this article is one which applies to an individual, association or corporation.

111. No bill introduced as a general law in either House of the Legislature shall be so amended on its passage as to become a special, private or local law.

ARTICLE V.

EXECUTIVE DEPARTMENT.

112. The Executive department shall consist of a Governor, Lieutenant-Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, Commissioner of Agriculture and Industries, and a Sheriff for each county.

113. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled "The Governor of the State of Alabama."

114. The Governor, Lieutenant-Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, and Commissioner of Agriculture and Industries shall be elected by the qualified electors of the State at the same time and places appointed for the election of members of the Legislature in the year nineten hundred and two, and in every fourth year thereafter.

115. The returns of every election for Governor, Lieuten-

ant-Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, and Commissioner of Agriculture and Industries shall be sealed up and transmitted by the returning officers to the seat of government, directed to the Speaker of the House of Representatives, who shall, during the first week of the session to which such returns shall be made, open and publish them in the presence of both Houses of the Legislature in joint convention; but the Speaker's duty and the duty of the joint convention shall be purely ministerial. The result of the election shall be ascertained and declared by the Speaker from the face of the returns without delay. The person having the highest number of votes for any one of said offices shall be declared duly elected; but if two or more persons shall have an equal and the highest number of votes for the same office, the Legislature by joint vote, without delay, shall choose one of said persons for said office. Contested elections for Governor, Lieutenant-Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, and Commissioner of Agriculture and Industries shall be determined by both Houses of the Legislature in such manner as may be prescribed by law.

116. The Governor, Lieutenant-Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, and Commissioner of Agriculture and Industries, elected after the ratification of this Constitution, shall hold their respective offices for the term of four years from the first Monday after the second Tuesday in January next succeeding their election, and until their successors shall be elected and qualified. After the first election under this Constitution no one of said officers shall be eligible as his own successor; and the Governor shall not be eligible to election or appointment to any office under this State, or to the Senate of the United States, during his term, and within one year after the expiration thereof.

117. The Governor and Lieutenant-Governor shall each be at least thirty years of age when elected, and shall have been citizens of the United States ten years and resident citizens of this State at least seven years next before the date of their election. The Lieutenant-Governor shall be ex-officio President of the Senate, but shall have no right to vote except in the event of a tie.

118. The Governor, Lieutenant-Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, and Commissioner of Agriculture and Industries shall receive compensation to be fixed by law, which shall not be increased or diminished during the term for which they shall have been elected, and shall, except the Lieutenant-Governor, reside at the State Capital during the time they continue in office, except during epidemics. The

compensation of the Lieutenant-Governor shall be the same as that received by the Speaker of the House, except while serving as Governor, during which time his compensation shall be the same as that allowed the Governor.

119. If the Legislature, at the session next after the ratification of this Constitution, shall enact a law increasing the salary of the Governor, such increase shall become effective and apply to the first Governor elected after the ratification of this Constitution, if the Legislature shall so determine.

120. The Governor shall take care that the laws be faithfully executed.

121. The Governor may require information in writing, under oath, from the officers of the executive department, named in this article, or created by statute, on any subject relating to the duties of their respective offices; and he may at any time require information in writing, under oath, from all officers and managers of State institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions. Any such officer or manager who makes a wilfully false report or fails without sufficient excuse to make the required report on demand, is guilty of an impeachable offense.

122. The Governor may, by proclamation, on extraordinary occasions, convene the Legislature at the seat of government, or at a different place if, since their last adjournment, that shall have become dangerous from an enemy, insurrection, or other lawless outbreak, or from any infectious or contagious disease; and he shall state specifically in such proclamation each matter concerning which the action of that body is deemed necessary.

123. The Governor shall, from time to time, give to the Legislature information of the state of the government, and recommend for its consideration such measures as he may deem expedient; and at the commencement of each regular session of the Legislature, and at the close of his term of office, he shall give information by written message of the condition of the State; and he shall account to the Legislature, as may be prescribed by law, for all moneys received and paid out by him or by his order; and at the commencement of each regular session he shall present to the Legislature estimates of the amount of money required to be raised by taxation for all purposes.

124. The Governor shall have power to remit fines and forfeitures, under such rules and regulations as may be prescribed by law; and, after conviction, to grant reprieves, paroles, commutations of sentence and pardons, except in cases of impeachment. The Attorney General, Secretary of State, and State Auditor shall constitute a Board of Pardons, who shall meet on the call of the Governor, and before whom shall be laid all recommendations or petitions, for pardon, commu-

tation or parol, in cases of felony; and the board shall hear them in open session, and give their opinion thereon in writing to the Governor, after which or on the failure of the board to advise for more than sixty days, the Governor may grant or refuse the commutation, parol or pardon, as to him seems best for the public interest. He shall communicate to the Legislature at each session every remission of fines and forfeitures, and every reprieve, commutation, parol, or pardon, with his reasons therefor, and the opinion of the Board of Pardons in each case required to be referred, stating the name and crime of the convict, the sentence, its date, and the date of reprieve, commutation, parol or pardon. Pardons in cases of felony and other offenses involving moral turpitude shall not relieve from civil and political disabilities, unless approved by the Board of Pardons and specifically expressed in the pardon.

125. Every bill which shall have passed both Houses of the Legislature, except as otherwise provided in this Constitution, shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the House in which it originated, which shall enter the objections at large upon the Journal and proceed to reconsider it. If the Governor's message proposes no amendment which would remove his objections to the bill, the House in which the bill originated may proceed to reconsider it, and if a majority of the whole number elected to that House vote for the passage of the bill, it shall be sent to the other House, which shall in like manner reconsider, and if a majority of the whole number elected to that House vote for the passage of the bill, the same shall become a law, notwithstanding the Governor's veto. If the Governor's message proposes amendment, which would remove his objections, the House to which it is sent may so amend the bill and send it with the Governor's message to the other House, which may adopt, but cannot amend, said amendment; and both Houses concurring in the amendment, the bill shall again be sent to the Governor and acted on by him as other bills. If the House to which the bill is returned refuses to make such amendment, it shall proceed to reconsider it; and if a majority of the whole number elected to that House shall vote for the passage of the bill, it shall be sent with the objections to the other House, by which it shall likewise be reconsidered, and if approved by a majority of the whole number elected to that House, it shall become a law. If the House to which the bill is returned makes the amendment, and the other House declines to pass the same, that House shall proceed to reconsider it, as though the bill had originated therein, and such proceedings shall be taken thereon as above provided. In every such case the vote of both Houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be

entered upon the Journals of each House respectively. If any bill shall not be returned by the Governor within six days, Sunday excepted, after it shall have been presented, the same shall become a law in like manner as if he had signed it, unless the Legislature, by its adjournment, prevent the return, in which case it shall not be a law; but when return is prevented by recess, such bill must be returned to the House in which it originated within two days after the reassembling, otherwise it shall become a law, but bills presented to the Governor within five days before the final adjournment of the Legislature may be approved by the Governor at any time within ten days after such adjournment, and if approved and deposited with the Secretary of State within that time shall become law. Every vote, order, or resolution to which concurrence of both Houses may be necessary, except on questions of adjournment and the bringing on of elections by the two Houses, and amending this Constitution, shall be presented to the Governor; and, before the same shall take effect, be approved by him; or, being disapproved, shall be repassed by both Houses according to the rules and limitations prescribed in the case of a bill.

126. The Governor shall have power to approve or disapprove any item or items of any appropriation bill embracing distinct items, and the part or the parts of the bill approved shall be the law, and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of bills over the executive veto; and he shall in writing state specifically the item or items he disapproves, setting the same out in full in his message, but in such case the enrolled bill shall not be returned with the Governor's objection.

127. In case of the Governor's removal from office, death or resignation, the Lieutenant-Governor shall become Governor. If both the Governor and Lieutenant-Governor be removed from office, die, or resign more than sixty days prior to the next general election at which any State officers are to be elected, a Governor and Lieutenant-Governor shall be elected at such election for the unexpired term, and in the event of a vacancy in the office, caused by the removal from office, death or resignation of the Governor and Lieutenant-Governor, pending such vacancy and until their successors shall be elected and qualified, the office of Governor shall be held and administered by either the President pro tem of the Senate, Speaker of the House of Representatives, Attorney General, State Auditor, Secretary of State, or State Treasurer in the order herein named. In case of the impeachment of the Governor, his absence from the State for more than twenty days, unsoundness of mind, or other disability, the power and authority of the office shall, until the Governor is acquitted, returns to the State, or is restored to his mind, or re-

lieved from other disability, devolve in the order herein named, upon the Lieutenant-Governor, President pro tem of the Senate, Speaker of the House of Representatives, Attorney General, State Auditor, Secretary of State, and State Treasurer. If any of these officers be under any of the disabilities herein specified, the office of Governor shall be administered in the order named by such of these officers as may be free from such disability. If the Governor shall be absent from the State over twenty days, the Secretary of State shall notify the Lieutenant-Governor, who shall enter upon the duties of Governor; if both the Governor and Lieutenant-Governor shall be absent from the State over twenty days, the Secretary of State shall notify the President pro tem of the Senate, who shall enter upon the duties of Governor, and so on, in case of such absence, shall notify each of the other officers named in their order, who shall discharge the duties of the office until the Governor or other officer entitled to administer the office in succession to the Governor returns. If the Governor-elect fails or refuse from any cause to qualify, the Lieutenant-Governor-elect shall qualify and exercise the duties of Governor until the Governor-elect qualifies; and in the event both the Governor-elect and the Lieutenant-Governor-elect from any cause fail to qualify, the President pro tem of the Senate, the Speaker of the House of Representatives, the Attorney General, State Auditor, Secretary of State, and State Treasurer shall in like manner, in the order named, administer the office, until the Governor-elect or Liuetenant-Governor-elect qualifies.

128. If the Governor or other officer administering the office shall appear to be of unsound mind, it shall be the duty of the Supreme Court of Alabama, at any regular term, or at any special term, which it is hereby authorized to call for that purpose, upon request in writing, verified by their affidavits, of any two of the officers named in Section 127 of this Constitution, not next in succession to the office of Governor, to ascertain the mental condition of the Governor or other officer administering the office, and if he is adjudged to be of unsound mind, to so decree, a copy of which decree, duly certified, shall be filed in the office of Secretary of State; and in the event of such adjudication it shall be the duty of the officer next in succession to perform the duties of the office until the Governor or other officer administering the office is restored to his mind. If the incumbent denies that the Governor or other person entitled to administer the office has been restored to his mind, the Supreme Court, at the instance of any officer named in Section 127 of this Constitution, shall ascertain the truth concerning the same, and if the officer has been restored to his mind, shall so adjudge and file a duly certified copy of its decree with the Secretary of State; and in the event of such adjudication, the office shall be restored to him. The Supreme Court shall prescribe the method of taking testi-

mony and the rules of practice in such proceedings, which rules shall include a provision for the service of notice of such proceedings on the Governor or person acting as Governor.

129. The Lieutenant-Governor, President pro tem of the Senate, Speaker of the House, Attorney General, State Auditor, Secretary of State, or State Treasurer, while administering the office of Governor, shall receive like compensation as that prescribed by law for the Governor, and no other.

130. No person shall at the same time hold the office of Governor and any other office, civil or military, under this State, or the United States, or any other State or government, except as otherwise provided in this Constitution.

131. The Governor shall be commander-in-chief of the militia and volunteer forces of this State, except when they shall be called into the service of the United States, and he may call out the same to execute the laws, suppress insurrection and repel invasion, but need not command in person unless directed to do so by resolution of the Legislature; and when acting in the service of the United States, he shall appoint his staff, and the Legislature shall fix his rank.

132. No person shall be eligible to the office of Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, or Commissioner of Agriculture and Industries unless he shall have been a citizen of the United States at least seven years, and shall have resided in this State at least five years next preceding his election, and shall be at least twenty-five years old when elected.

133. There shall be a seal of the State which shall be used officially by the Governor, and the seal now in use shall continue to be used until another shall have been adopted by the Legislature. The seal shall be called "The Great Seal of the State of Alabama."

134. The Secretary of State shall be the custodian of the Great Seal of the State, and shall authenticate therewith all official acts of the Governor, except his approval of laws, resolutions, appointments to office, and administrative orders. He shall keep a register of the official acts of the Governor, and when necessary, shall attest them, and lay copies of same together with copies of all papers relative thereto, before either House of the Legislature when required to do so, and shall perform such other duties as may be prescribed by law.

135. All grants and commissions shall be issued in the name and by the authority of the State of Alabama, sealed with the Great Seal of the State, signed by the Governor and countersigned by the Secretary of State.

136. Should the office of Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, or Commissioner of Agriculture and Industries become vacant from any cause, the Governor shall fill such vacancy until the disability is removed or a successor elected and quali-

fied. In case any of said officers shall become of unsound mind, such unsoundness shall be ascertained by the Supreme Court upon the suggestion of the Governor.

137. The Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, and Commissioner of Agriculture and Industries shall perform such duties as may be prescribed by law. The State Treasurer and State Auditor shall every year, at a time fixed by the Legislature, make a full and complete report to the Governor, showing the receipts and disbursements of every character, all claims audited and paid out, by items, and all taxes and revenues collected and paid into the treasury, and the sources thereof. They shall make reports oftener upon any matters pertaining to their offices, if required by the Governor or the Legislature. The Attorney General, State Auditor, Secretary of State, State Treasurer, and Commissioner of Agriculture and Industries shall not receive to their use any fees, costs, perquisites of office or other compensation than the salaries prescribed by law, and all fees that may be payable for any services performed by such officers shall be at once paid into the State Treasury.

138. A Sheriff shall be elected in each county by the qualified electors thereof, who shall hold office for a term of four years, unless sooner removed, and he shall be ineligible to such office as his own successor; provided, that the terms of all Sheriffs expiring in the year nineteen hundred and four are hereby extended until the time of the expiration of the terms of the other executive officers of this State in the year nineteen hundred and seven, unless sooner removed. Whenever any prisoner is taken from jail, or from the custody of any Sheriff or his deputy, and put to death, or suffers grievous bodily harm, owing to the neglect, connivance, cowardice or other grave fault of the Sheriff, such Sheriff may be impeached under Section 174 of the Constitution. If the Sheriff be impeached, and thereupon convicted, he shall not be eligible to hold any office in this State during the time for which he had been elected or appointed to serve as Sheriff.

ARTICLE VI.

JUDICIAL DEPARTMENT.

139. The judicial power of the State shall be vested in the Senate sitting as a court of impeachment, a Supreme Court, Circuit Courts, Chancery Courts, Courts of Probate, such courts of law and equity inferior to the Supreme Court, and to consist of not more than five members, as the Legislature from time to time may establish, and such persons as may be by law invested with powers of a judicial nature; but no court of general jurisdiction, at law or in equity, or both, shall hereafter be established in and for any one county having a

population of less than twenty thousand, according to the next preceding Federal census, and property assessed for taxation at a less valuation than three million five hundred thousand dollars.

140. Except in cases otherwise directed in this Constitution, the Supreme Court shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may from time to time be prescribed by law, except where jurisdiction over appeals is vested in some inferior court, and made final therein; provided, that the Supreme Court shall have power to issue writs of injunction, habeas corpus, quo warranto, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions.

141. The Supreme Court shall be held at the seat of government, but if that shall become dangerous from any cause, it may convene at or adjourn to another place.

142. Except as otherwise authorized in this article, the State shall be divided into convenient circuits. For each circuit there shall be chosen a judge, who shall, for one year next preceding his election and during his continuance in office, reside in the circuit for which he is elected.

143. The Circuit Court shall have original jurisdiction in all matters civil and criminal within the State not otherwise excepted in this Constitution; but in civil cases, other than suits for libel, slander, assault and battery, and ejectment, it shall have no original jurisdiction except where the matter or sum in controversy exceeds fifty dollars.

144. A Circuit Court, or a court having the jurisdiction of the Circuit Court, shall be held in each county in the State at least twice every year, and judges of the several courts mentioned in this section may hold court for each other when they deem it expedient, and shall do so when directed by law. The judges of the several courts mentioned in this section shall have power to issue writs of injunction, returnable to the Courts of Chancery, or courts having the jurisdiction of Courts of Chancery.

145. The Legislature shall have power to establish a Court or Courts of Chancery, with original and appellate jurisdiction, except as otherwise authorized in this article. The State shall be divided by the Legislature into convenient Chancery divisions; each division shall be divided into districts, and for each division there shall be a chancellor, who shall have resided in the division for which he shall be elected or appointed, for one year next preceding his election or appointment, and shall reside therein during his continuance in office.

146. A Chancery Court, or a court having the jurisdiction of the Chancery Court, shall be held in each district, at a place to be fixed by law, at least twice in each year, and the chancel-

lors may hold court for each other when they deem it necessary, and shall do so when directed by law.

147. Any county having a population of twenty thousand or more, according to the next preceding Federal census, and also taxable property of three million five hundred thousand dollars or more in value, according to the next preceding assessment of property for State and county taxation, need not be included in any circuit or chancery division; but if the value of its taxable property shall be reduced below that limit, or if its population shall be reduced below that number, the Legislature shall include such county in a circuit and chancery division, or either, embracing more than one county. No Circuit or Chancery division shall contain less than three counties, unless there be embraced therein a county having a population of twenty thousand or more, and taxable property of three million five hundred thousand dollars or more in value.

148. The Legislature may confer upon the Circuit Court or the Chancery Court the jurisdiction of both of said courts. In counties having two or more courts of record, the Legislature may provide for the consolidation of all or any such courts of record, except the Probate Court, with or without separate divisions, and a sufficient number of judges for the transaction of the business of such consolidated court.

149. The Legislature shall have power to establish in each county a court of probate, with general jurisdiction of orphan's business and with power to grant letters testamentary and administration; provided, that whenever any court having equity powers has taken jurisdiction of the settlement of any estate, it shall have power to do all things necessary for the settlement of such estate, including the appointment and removal of administrators, executors, guardians and trustees, and including action upon the resignation of either of them.

150. The Justices of the Supreme Court, Chancellors, and the Judges of the Circuit Courts and other courts of record, except Probate Courts, shall, at stated times, receive for their services a compensation which shall not be diminished during their official terms; they shall receive no fees or perquisites, nor hold any office, except judicial offices, of profit or trust under this State or the United States, or any other government, during the time for which they have been elected or appointed.

151. The Supreme Court shall consist of one Chief Justice and such number of Associate Justices as may be prescribed by law.

152. The Chief Justice and Associate Justices of the Supreme Court, Judges of the Circuit Courts, Judges of Probate Courts and Chancellors shall be elected by the qualified electors of the State, circuits, counties and chancery divisions, for which such courts may be established, at such times as may be prescribed by law, except as herein otherwise provided.

153. The Judges of such inferior courts of law and equity as may be by law established, shall be elected or appointed in such mode as the Legislature may prescribe.

154. Chancellors and Judges of all courts of record shall have been citizens of the United States and of this State for five years next preceding their election or appointment, and shall be not less than twenty-five years of age, and, except Judges of Probate Courts, shall be learned in the law.

155. Except as otherwise provided in this article, the Chief Justice and Associate Justices of the Supreme Court, Circuit Judges, Chancellors, and Judges of Probate, shall hold office for the term of six years, and until their successors are elected or appointed, and qualified; and the right of such Judges and Chancellors to hold their offices for the full term hereby prescribed shall not be affected by any change hereafter made by law in any circuit, division or county, or in the mode or time of election.

156. The Chief Justice and Associate Justices of the Supreme Court shall be choses at an election to be held at the time and places fixed by law for the election of members of the House of Representatives of the Congrss of the United States, until the Legislature shall by law change the time of holding such election. The term of office of the Chief Justice, who shall be elected in the year nineteen hundred and four, shall be as provided in the last preceding section. The successors of two of the Associate Justices elected in the year nineteen hundred and four shall be elected in the year nineteen hundred and six, and the successors of the other two Associate Justices elected in nineteen hundred and four, shall be elected in the year nineteen hundred and eight. The Associate Justices of said court elected in the year nineteen hundred and four shall draw or cast lots among themselves to determine which of them shall hold office for the terms ending, respectively, in the years nineteen hundred and six and nineteen hundred and eight, and until their respective successors are elected or appointed and qualified. The result of such determination shall be certified to the Governor by such Associate Justices, or a majority of them, prior to the first day of January, nineteen hundred and five, and such certificate shall be entered upon the minutes of the court. In the event of the failure of said Associate Justices to make and certify such determination, the Governor shall designate the terms for which they shall respectively hold office, as above provided, and shall issue his proclamation accordingly. In the event of an increase or reduction by law of the number of Associate Justices of the Supreme Court, the Legislature shall, as nearly as may be, provide for the election, each second year, of one-third of the members of said court.

157. All judicial officers within their respective jurisdictions shall, by virtue of their offices, be conservators of the peace.

158. Vacancies in the office of any of the Justices of the

Supreme Court or Judges who hold office by election, or Chancellors of this State, shall be filled by appointment by the Governor. The appointee shall hold his office until the next general election for any State officer held at least six months after the vacancy occurs, and until his successor is elected and qualified; the successor chosen at such election shall hold office for the unexpired term and until his successor is elected and qualified.

159. Whenever any new circuit or chancery division is created the Judge or Chancellor therefor shall be elected at the next general election for any State officer for a term to expire at the next general election for Circuit Judge and Chancellors; provided, that if said new circuit or chancery division is created more than six months before such general election for any State officer, the Governor shall appoint some one as Judge or Chancellor, as the case may be, to hold the office until such election.

160. If in any case, civil or criminal, pending in any Circuit Court, Chancery Court, or in any court of general jurisdiction having any part of the jurisdiction of a Circuit and a Chancery Court, or either of them in this State, the presiding judge or chancellor shall, for any legal cause, be incompetent to try, hear or render judgment in such case, the parties, or their attorneys of record, if it be a civil case, or the solicitor or prosecuting officer, and the defendant or defendants, if it be a criminal case, may agree upon some disinterested person practicing in the court and learned in the law, to act as special judge or chancellor to sit as a court, and to hear, decide, and render judgment in the same manner and to the same effect as such incompetent Chancellor or Judge could have rendered but for such incompetency. If the case be a civil one, and the parties or their attorneys of record do not agree; or if it be a criminal one, and the prosecuting officer and the defendant or defendants do not agree upon a special judge or chancellor, or if either party in a civil cause is not represented in court, the Register in Chancery or the clerk of such Circuit or other court in which said cause is pending, shall appoint a special judge or chancellor, who shall preside, try and render judgment as in this section provided. The Legislature may prescribe other methods for supplying special judges in such cases.

161. The Legislature shall have power to provide for the holding of Chancery and Circuit Courts, and for the holding of courts having the jurisdiction of Circuit and Chancery Courts, or either of them, when the Chancellors or Judges thereof fail to attend regular terms.

162. No Judge of any court of record in this State shall practice law in any of the courts of this State or of the United States.

163. Registers in Chancery shall be appointed by the Chan-

cellors of the respective divisions, and shall have been at least twelve months before their appointment, and shall be at the time of their appointment and during their continuance in office, resident citizens of the district for which they are appointed. They shall hold office for the term for which the Chancellors making such appointment was elected or appointed. Such registers shall receive as compensation for their services only such fees and commissions as may be specifically prescribed by law, which fees shall be uniform throughout the State.

164. The clerk of the Supreme Court shall be appointed by the Judges thereof, and shall hold office for the term of six years; and the clerks of such inferior courts as may be established by law shall be selected in such manner as the Legislature may provide.

165. Clerks of the Circuit Court shall be elected by the qualified electors in each county for the term of six years, and may, when appointed by the Chancellor, also fill the office of Register in Chancery. Vacancies in such office of clerk shall be filled by the Judge of the Circuit Court for the unexpired term.

166. The clerk of the Supreme Court and Registers in Chancery may be removed from office by the Justices of the Supreme Court, and by the Chancellors, respectively, for cause, to be entered at length upon the minutes of the court.

167. A Solicitor for each judicial circuit or other territorial subdivision prescribed by the Legislature, shall be elected by the qualified electors of those counties in such circuit or other territorial subdivision in which such Solicitor prosecutes criminal cases, and such Solicitor shall be learned in the law, and shall at the time of his election and during his continuance in office, reside in a county (in the circuit) in which he prosecutes criminal cases, or other territorial subdivision for which he is elected, and his term of office shall be for four years, and he shall receive no other compensation than a salary, to be prescribed by law, which shall not be increased during the term for which he was elected; provided, that this article shall not operate to abridge the term of any Solicitor now in office; and, provided further, that the Solicitors elected in the year nineteen hundred and four shall hold office for six years, and until their successors are elected and qualified; and provided further, that the Legislature may provide by law for the appointment by the Governor or the election by the qualified electors of a county for a Solicitor for any county.

168. In each precinct not lying within, or partly within, any city or incorporated town or more than fifteen hundred inhabitants, there shall be elected by the qualified electors of such precinct not exceeding two Justices of the Peace, and one Constable. Where one or more precincts lie within, or partly within, a city or incorporated town having more than fifteen

hundred inhabitants, the Legislature may provide by law for the election of not more than two Justice of the Peace and one Constable, for each of such precincts, or an inferior court for such precinct or precincts, in lieu of all Justices of the Peace therein. Justices of the Peace, and the inferior courts in this section provided for, shall have jurisdiction in all civil cases where the amount in controversy does not exceed one hundred dollars, except in cases of libel, slander, assault and battery, and ejectment. The Legislature may provide by law what fees may be charged by Justices of the Peace and Constables, which fees shall be uniform throughout the State. The right of appeal from any judgment of a Justice of the Peace, or from any inferior court authorized by this section, without the prepayment of costs, and also the term of office of such Justices, and the Judges of such inferior courts, and of Notaries Public, shall be provided for by law. The Governor may appoint Notaries Public without the powers of a Justice of the Peace, and may, except where otherwise provided by an act of the Legislature, appoint not more than one Notary Public with all the powers and jurisdiction of a Justice of the Peace for each precinct in which the election of Justices of the Peace shall be authorized.

169. In all prosecutions for rape and assault with intent to ravish, the court may, in its discretion, exclude from the court room all persons, except such as may be necessary in the conduct of the trial.

170. The style of all processes shall be "The State of Alabama," and all prosecutions shall be carried on in the name and by the authority of the same, and shall conclude "Against the peace and dignity of the State."

171. The Legislature shall have the power to abolish any court, except the Supreme Court and the Probate Courts, whenever its jurisdiction and functions have been conferred upon some other court.

172. Nothing in this article shall be so construed as to abridge the term of office of any officer now in office.

ARTICLE VII.

IMPEACHMENTS.

173. The Governor, Lieutenant-Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, Commissioner of Agriculture and Industries, and Justices of the Supreme Court may be removed from office for wilful neglect of duty, corruption in office, incompetency, or intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such duties, or for any offense involving moral turpitude while in office, or committed under

color thereof, or connected therewith, by the Senate sitting as a court of impeachment, under oath or affirmation, on articles or charges preferred by the House of Representatives. When the Governor or Lieutenant-Governor is impeached, the Chief Justice, or if he be absent or disqualified, then one of the Associate Justices of the Supreme Court, to be selected by it, shall preside over the Senate when sitting as a court of impeachment. If at any time when the Legislature is not in session, a majority of all the members elected to the House of Representatives shall certify in writing to the Secretary of State their desire to meet to consider the impeachment of the Governor, Lieutenant-Govrnor, or other officer administering the office of Governor, it shall be the duty of the Secretary of State immediately to notify the Speaker of the House, who shall, within ten days after receipt of such notice, summon the members of the House, by publication in some newspaper published at the Capital, to assemble at the Capitol on a day to be fixed by the Speaker, not later than fifteen days after the receipt of the notice to him from the Secretary of State, to consider the impeachment of the Governor, Lieutenant-Governor, or other officer administering the office of Governor. If the House of Representatives prefer articles of impeachment, the Speaker of the House shall forthwith notify the Lieutenant-Governor, unless he be the officer impeached, in which event he shall notify the Secretary of State, who shall summon, in the manner herein above provided for, the members of the Senate to assemble at the Capitol on a day to be named in said summons, not later than ten days after receipt of the notice from the Speaker of the House, for the purpose of organizing as a court of impeachment. The Senate, when thus organized, shall hear and try such articles of impeachment against the Governor, Lieutenant-Governor or other officer administering the office of Governor, as may be preferred by the House of Representatives.

174. The Chancellors, Judges of the Circuit Courts, Judges of the Probate Courts, and Judges of other courts from which an appeal may be taken directly to the Supreme Court, and Solicitors and Sheriffs, may be removed from office for any of the causes specified in the preceding section or elsewhere in this Constitution, by the Supreme Court, under such regulations as may be prescribed by law. The Legislature may provide for the impeachment or removal of other officers than those named in this article.

175. The clerks of the Circuit Courts, or courts of like jurisdiction, and of Criminal Courts, Tax Collectors, Tax Assessors, County Treasurers, County Superintendents of Education, Judges of inferior courts created under authority of Section 168 of this Constitution, Coroners, Justices of the Peace, Notaries Public, Constables, and all other county officers, Mayors, Intendants, and all other officers of incorporated

cities and towns in this State, may be removed from office for any of the causes specified in Section 173 of this Constitution, by the Circuit or other courts of like jurisdiction or a Criminal Court of the county in which such officers hold their office, under such regulations as may be prescribed by law; provided, that the right of trial by jury and appeal in such cases shall be secured.

176. The penalties in cases arising under the three preceding sections shall not extend beyond removal from office, and disqualifications from holding office, under the authority of this State, for the term for which the officer was elected or appointed; but the accused shall be liable to indictment and punishment as prescribed by law.

ARTICLE VIII.

SUFFRAGE AND ELECTIONS.

177. Every male citizen of this State who is a citizen of the United States, and every male resident of foreign birth, who, before the ratification of this Constitution, shall have legally declared his intention to become a citizen of the United States, 21 years old or upwards, not laboring under any of the disabilities named in this article, and possessing the qualifications required by it, shall be an elector, and shall be entitled to vote at any election by the people; provided, that all foreigners who have legally declared their intention to become citizens of the United States, shall, if they fail to become citizens thereof at the time they are entitled to become such, cease to have the right to vote until they become such citizens.

178. To entitle a person to vote at any election by the people, he shall have resided in the State at least two years, in the county one year, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and he shall have been duly registered as an elector, and shall have paid on or before the first day of February next preceding the date of the election at which he offers to vote, all poll taxes due from him for the year nineteen hundred and one, and for each subsequent year; provided, that any elector who within three months next preceding the date of the election at which he offers to vote, has removed from one precinct or ward to another precinct or ward in the same county, incorporated town or city, shall have the right to vote in the precinct or ward from which he has so removed, if he would have been entitled to vote in such precinct or ward but for such removal.

179. All elections by the people shall be by ballot, and all elections by persons in a representative capacity shall be viva voce.

180. The following male citizens of this State, who are citizens of the United States, and every male resident of for-

eign birth, who, before the ratification of this Constitution, shall have legally declared his intention to become a citizen of the United States, and who shall not have had an opportunity to perfect his citizenship prior to the twentieth day of December, nineteen hundred and two, twenty-one years old or upwards, who, if their place of residence shall remain unchanged, will have, at the date of the next general election the qualifications as to residence prescribed in Section 178 of this Constitution, and who are not disqualified under Section 182 of this Constitution, shall, upon application, be entitled to register as electors prior to the twentieth day of December, nineteen hundred and two, namely:

First—All who have honorably served in the land or naval forces of the United States in the war of 1812, or in the war with Mexico, or in any war with the Indians, or in the war between the States, or in the war with Spain, or who honorably served in the land or naval forces of the Confederate States, or of the State of Alabama in the war between the States; or,

Second—The lawful descendants of persons who honorably served in the land or naval forces of the United States in the war of the American Revolution, or in the war of 1812, or in the war with Mexico, or in any war with the Indians, or in the war between the States, or in the land or naval forces of the Confederate States, or of the State of Alabama in the war between the States; or,

Third—All persons who are of good character and who understand the duties and obligations of citizenship under a republican form of government.

181. After the first day of January, nineteen hundred and three, the following persons, and no others, who, if their place of residence shall remain unchanged, will have, at the date of the next general election, the qualifications as to residence prescribed in Section 178 of this article, shall be qualified to register as electors; provided, they shall not be disqualified under Section 182 of this Constitution.

First—Those who can read and write any article of the Constitution of the United States in the English language, and who are physically unable to work; and those who can read and write any article of the Constitution of the United States in the English language, and who have worked or been regularly engaged in some lawful employment, business or occupation, trade or calling for the greater part of the twelve months next preceding the time they offer to register; and those who are unable to read and write, if such inability is due solely to physical disability; or,

Second—The owner in good faith in his own right, or the husband of a woman who is the owner in good faith, in her own right, of forty acres of land situate in this State, upon which they reside; or the owner in good faith in his own

right, or the husband of any woman who is the owner in good faith, in her own right, of real estate situate in this State, assessed for taxation at the value of three hundred dollars or more, or the owner in good faith, in his own right, or the husband of a woman who is the owner in good faith, in her own right, of personal property in this State assessed for taxation at three hundred dollars or more; provided, that the taxes due upon such real or personal property for the year next preceding the year in which he offers to register shall have been paid, unless the assessment shall have been legally contested and is undetermined.

182. The following persons shall be disqualified both from registering and from voting, namely:

All idiots and insane persons; those who shall by reason of conviction of crime be disqualified from voting at the time of the ratification of this Constitution; those who shall be convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, sobornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude; also, any person who shall be convicted as a vagrant or tramp, or of selling or offering to sell his vote or the vote of another, or of making or offering to make false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector.

183. No person shall be qualified to vote, or participate in any primary election, party convention, mass meeting or other method of party action of any political party or faction, who shall not possess the qualifications prescribed in this article for an elector, or who shall be disqualified from voting under the provisions of this article.

184. No person, not registered and qualified as an elector under the provisions of this article shall vote at the general election in nineteen hundred and two, or at any subsequent State, county or municipal election, general, local or special; but the provisions of this article shall not apply to any election held prior to the general election in the year nineteen hundred and two.

185. Any elector whose right to vote shall be challenged for any legal cause before an election officer, shall be required to swear or affirm that the matter of the challenge is untrue before his vote shall be received, and any o[illegible] who wilfully swears or affirms falsely thereto shall be guilty of perjury, and upon conviction thereof shall be imprisoned in the peni-

tentiary for not less than one nor more than five years.

186. The Legislature shall provide by law for the registration, after the first day of January, nineteen hundred and three, of all qualified electors. Until the first day of January, nineteen hundred and three, all electors shall be registered under and in accordance with the requirements of this section as follows:

First—Registration shall be conducted in each county by a board of three reputable and suitable persons resident in the county, who shall not hold any elective office during their term, to be appointed within sixty days after the ratification of this Constitution, by the Governor, Auditor and Commissioner of Agriculture and Industries, or by a majority of them acting as a board of appointment. If one or more of the persons appointed on such board of registration shall refuse, neglect or be unable to qualify or serve, or if a vacancy or vacancies occur in the membership of the board of registrars from any cause, the Governor, Auditor and Commissioner of Agriculture and Industries, or a majority of them, acting as a board of appointment, shall make other appointments to fill such board. Each registrar shall receive two dollars per day, to be paid by the State, and disbursed by the several Judges of Probate, for each entire day's attendance upon the sessions of the board. Before entering upon the performance of the duties of his office, each registrar shall take the same oath required of the judicial officers of the State, which oath may be administered by any person authorized by law to administer oaths. The oath shall be in writing and subscribed by the registrar, and filed in the office of the Judge of Probate of the county.

Second—Prior to the first day of August, nineteen hundred and two, the Board of Registrars in each county shall visit each precinct at least once and oftener if necessary to make a complete registration of all persons entitled to register, and shall remain there at least one day from eight o'clock in the morning until sunset. They shall give at least twenty days' notice of the time when, and the place in the precinct where they will attend to register applicants for registration, by bills posted at five or more public places in each election precinct, and by advertisement once a week for three successive weeks in a newspaper, if there be one published in the county. Upon failure to give such notice, or to attend any appointment made by them in any precinct, they shall, after like notice, fill new appointments therein; but the time consumed by the board in completing such registration shall not exceed sixty working days in any county, except that in counties of more than nine hundred square miles in area, such board may consume seventy-five working days in completing the registration, and except that in counties in which there is any city of eight thousand or more inhabitants, the board may

remain in session, in addition to the time hereinbefore prescribed, for not more than three successive weeks in each of such cities; and thereafter the board may sit from time to time in each of such cities not more than one week in each month, and except that in the county of Jefferson the board may hold an additional session of not exceeding five consecutive days duration for each session, in each town or city of more than one thousand and less than eight thousand inhabitants. No person shall be registered except at the county site or in the precinct in which he resides. The registrars shall issue to each person registered a certificate of registration.

Third—The Board of Registrars shall not register any person between the first day of August, nineteen hundred and two, and the Friday next preceding the day of election in November, nineteen hundred and two. On Friday and Saturday next preceding the day of election in November, nineteen hundred and two, they shall sit in the court house of each county during such days, and shall register all applicants having the qualifications prescribed by Section 180 of this Constitution, and not disqualified under Section 182, who shall have reached the age of twenty-one years after the first day of August, nineteen hundred and two, or who shall prove to the reasonable satisfaction of the board that, by reason of physical disability or unavoidable absence from the county, they had no opportunity to register prior to the first day of August, nineteen hundred and two, and they shall not on such days register any other persons. When there are two or more court houses in a county, the registrars may sit during such two days at the court house they may select, but shall give ten days' notice, by bills posted at each of the court houses, designating the court house at which they will sit.

Fourth—The Board of Registrars shall hold sessions at the court house of their respective counties during the entire third week in November, nineteen hundred and two, and for six working days next prior to the twentieth day of December, nineteen hundred and two, during which sessions they shall register all persons applying who possess the qualifications prescribed in Section 180 of this Constitution, and who shall not be disqualified under Section 182. In counties where there are two or more court houses the Board of Registrars shall divide the time equally between them. The Board of Registrars shall give notice of the time and place of such sessions by posting notices at each court house in their respective counties, and at each voting place and at three other public places in the county, and by publication once a week for two consecutive weeks in a newspaper, if one be published in the county; such notices to be posted and such publications to be commenced as early as practicable in the first week of November, nineteen hundred and two. Failure on the part of the registrars to conform to the provisions of this article as to

the giving of the required notices shall not invalidate any registration made by them.

Fifth—The Board of Registrars shall have power to examine, under oath or affirmation, all applicants for registration, and to take testimony touching the qualifications of such applicants. Each member of such board is authorized to administer the oath to be taken by the applicants and witnesses, which shall be in the following form, and subscribed by the person making it, and preserved by the board, namely: "I solemnly swear (or affirm) that in the matter of the application of ..... for registration as an elector, I will speak the truth, the whole truth, and nothing but the truth, so help me God." Any person who upon such examination makes any wilfully false statement in reference to any material matter touching the qualification of any applicant for registration shall be guilty of perjury, and upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than five years.

Sixth—The action of the majority of the Board of Registrars shall be the action of the board, and a majority of the board shall constitute a quorum for the transaction of all business. Any person to whom registration is denied shall have the right of appeal, without giving security for costs, within thirty days after such denial, by filing a petition in the Circuit Court or court of like jurisdiction held for the county in which he seeks to register, to have his qualifications as an elector determined. Upon the filing of the petition the clerk of the court shall give notice thereof to any Solicitor authorized to represent the State in said county, whose duty it shall be to appear and defend against the petition on behalf of the State. Upon such trial the court shall charge the jury only as to what constitutes the qualifications that entitle the applicant to become an elector at the time he applied for registration, and the jury shall determine the weight and effect of the evidence and return a verdict. From the judgment rendered an appeal will lie to the Supreme Court in favor of the petitioner, to be taken within thirty days. Final judgment in favor of the petitioner shall entitle him to registation as of the date of his application to the registrars.

Seventh—The Secretary of State shall, at the expense of the State, have prepared and shall furnish to the registrars and judges of probate of the several counties a sufficient number of registration books and of blank forms of the oath, certificates of registration and notices required to be given by the registrars. The cost of the publication in newspapers of the notices required to be given by the registrars shall be paid by the State, the bills therefor to be rendered to the Secretary of State and approved by him.

Eighth—Any person who registers for another, or who registers more than once, and any registrar who enters the

name of any person on the list of registered voters, without such person having made application in person under oath on a form provided for that purpose, or who knowingly registers any person more than once, or who knowingly enters a name upon the registration list as the name of a voter, without any one of that name applying to register, shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary for not less than one nor more than five years.

187. The Board of Registrars in each county shall on or before the first day of February, nineteen hundred and three, or as soon thereafter as practicable, file in the office of the Judge of Probate in their county, a complete list sworn to by them of all persons registered in their county, showing the age of such persons so registered, with the precinct or ward in which each of such persons resides set opposite the name of such persons and shall also file a like list in the office of the Secretary of State. The Judge of Probate shall, on or before the first day of March, nineteen hundred and three, or as soon thereafter as practicable, cause to be made from such list in duplicate, in the books furnished by the Secretary of State, an alphabetical list by precincts of the persons shown by the list of registrars to have been registered in the county, and shall file one of such alphabetical lists in the office of the Secretary of State; for which services by the Judges of Probate compensation shall be provided by the Legislature. The Judges of Probate shall keep both the original list filed by the registrars and the alphabetical list made therefrom as records in the office of the Judge of Probate of the county. Unless he shall become disqualified under the provisions of this article, any one who shall register prior to the first day of January, nineteen hundred and three, shall remain an elector during life, and shall not be required to register again unless he changes his residence, in which event he may register again on production of his certificate. The certificate of the registrars or of the Judge of Probate or of the Secretary of State shall be sufficient evidence to establish the fact of such life registration. Such certificate shall be issued free of charge to the elector, and the Legislature shall provide by law for the renewal of such certificate when lost, mutilated or destroyed.

188. From and after the first day of January, nineteen hundred and three, any applicant for registration may be required to state under oath, to be administered by the registrar or by any person authorized by law to administer oaths, where he lived during the five years next preceding the time at which he applies to register, and the name or names by which he was known during that period, and the name of his employer or employers, if any, during such period. Any applicant for registration who refuses to state such facts, or any of them, shall not be entitled to register, and any person so

offering to register, who wilfully makes a false statement in regard to such matters, or any of them, shall be guilty of perjury, and upon conviction thereof shall be imprisoned in the penitentiary for not less than one nor more than five years.

189. In the trial of any contested election, and in proceedings to investigate any election, and in criminal prosecutions for violations of the election laws, no person other than a defendant in such criminal prosecutions shall be allowed to withhold his testimony on the ground that he may criminate himself or subject himself to public infamy; but such person shall not be prosecuted for any offense arising out of the transactions concerning which he testified, but may be prosecuted for perjury committed on such examination.

190. The Legislature shall pass laws not inconsistent with this Constitution to regulate and govern elections, and all such laws shall be uniform throughout the State; and shall provide by law for the manner of holding elections and of ascertaining the result of the same, and shall provide general registration laws not inconsistent with the provisions of this article, for the registration of all qualified electors from and after the first day of January, nineteen hundred and three. The Legislature shall also make provision by law, not inconsistent with this article, for the regulation of primary elections, and for punishing frauds at the same, but shall not make primary elections compulsory. The Legislature shall by law provide for purging the registration list of the names of those who die, become insane, or convicted of crime, or otherwise disqualified as electors under the provisions of this Constitution, and of any names which may have been fraudulently entered on such list by the registrars; provided, that a trial by jury may be had on the demand of any person whose name is proposed to be stricken from the list.

191. It shall be the duty of the Legislature to pass adequate laws giving protection against the evils arising from the use of intoxicating liquors at all elections.

192. Electors shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, or while going to or returning therefrom.

193. Returns of elections for members of the Legislature and for all civil officers who are to be commissioned by the Governor, except the Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, and Commissioner of Agriculture and Industries, shall be made to the Secretary of State.

194. The poll tax mentioned in this article shall be one dollar and fifty cents upon each male inhabitant of the State, over the age of twenty-one years, and under the age of forty-five years, who would not now be exempt by law; but the Legislature is authorized to increase the maximum age fixed

in this section to not more than sixty years. Such poll tax shall become due and payable on the first day of October in each year, and become delinquent on the first day of the next succeeding February, but no legal process, nor any fee or commission shall be allowed for the collection thereof. The Tax Collector shall make returns of poll tax collections separate from other collections.

195. Any person who shall pay the poll tax of another, or advance him money for that purpose in order to influence his vote, shall be guilty of bribery, and upon conviction therefor shall be imprisoned in the penitentiary for not less than one nor more than five years.

196. If any section or subdivision of this article shall, for any reason, be or be held by any court of competent jurisdiction and of final resort, to be invalid, inoperative or void, the residue of this article shall not be thereby invalidated or affected.

ARTICLE IX.

REPRESENTATION.

197. The whole number of Senators shall be not less than one-fourth or more than one-third of the whole number of Representatives.

198. The House of Representatives shall consist of not more than one hundred and five members, unless new counties shall be created, in which event each new county shall be entitled to one Representative. The members of the House of Representatives shall be apportioned by the Legislature among the several counties of the State, according to the number of inhabitants in them respectively, as ascertained by the decennial census of the United States, which apportionment when made shall not be subject to alteration until the next session of the Legislature after the next decennial census of the United States shall have been taken.

199. It shall be the duty of the Legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of Representatives and apportion them among the several counties of the State, according to the number of inhabitants in them respectively; provided, that each county shall be entitled to at least one Representative.

200. It shall be the duty of the Legislature at its first session after taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of Senators, and to divide the State into as many Senatorial districts as there are Senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall

be entitled to one Senator, and no more; and such districts when formed, shall not be changed until the next apportioning session of the Legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the Legislature may be attached to Senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other.

201. Should any decennial census of the United States not be taken, or if when taken the same, as to this State be not full and satisfactory, the Legislature shall have power at its first session after the time shall have elapsed for the taking of said census, to provide for an enumeration of all the inhabitants of this State, upon which it shall be the duty of the Legislature to make the apportionment of Representatives and Senators as provided for in this article.

202. Until the Legislature shall make an apportionment of Representatives among the several counties, as provided in the preceding section, the counties of Autauga, Baldwin, Bibb, Blount, Cherokee, Chilton, Choctaw, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Lamar, Lawrence, Limestone, Macon, Marion, Marshall, Monroe, Pickens, Randolph, St. Clair, Shelby, Washington, and Winston, shall each have one Representative; the counties of Barbour, Bullock, Butler, Calhoun, Chambers, Clarke, Elmore, Etowah, Hale, Henry, Jackson, Lauderdale, Lee, Lowndes, Madison, Marengo, Morgan, Perry, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Wilcox, shall each have two Representatives; the counties of Dallass and Mobile shall each have three Representatives; the county of Montgomery shall have four Representatives; and the county of Jefferson shall have seven Representatives.

203. Until the Legislature shall divide the State into Senatorial districts, as herein provided, the Senatorial districts shall be as follows:

First district, Lauderdale and Limestone; Second district, Lawrence and Morgan; Third district, Blount, Cullman and Winston; Fourth district, Madison; Fifth district, Jackson and Marshall; Sixth district, Etowah and St. Clair; Seventh district, Calhoun; Eighth district, Talladega; Ninth district, Chambers and Randolph; Tenth district, Tallapoosa and Elmore; Eleventh district, Tuscaloosa; Twelfth district, Fayette, Lamar and Walker; Thirteenth district, Jefferson; Fourteenth district, Pickens and Sumter; Fifteenth district, Autauga, Chilton and Shelby; Sixteenth district, Lowndes; Seventeenth district, Butler, Conecuh and Covington; Eighteenth district, Bibb and Perry; Nineteenth district, Choctaw, Clarke and Washington; Twentieth district, Marengo; Twenty-first

district, Baldwin, Escambia and Monroe; Twenty-second district, Wilcox; Twenty-third district, Dale and Geneva; Twenty-fourth district, Barbour; Twenty-fifth district, Coffee, Crenshaw and Pike; Twenty-sixth district, Bullock and Macon; Twenty-seventh district, Lee and Russell; Twenty-eighth district, Montgomery; Twenty-ninth district, Cherokee and DeKalb; Thirtieth district, Dallas; Thirty-first district, Colbert, Franklin and Marion; Thirty-second district, Greene and Hale; Thirty-third district, Mobile; Thirty-fourth district, Cleburne, Clay and Coosa; Thirty-fifth district, Henry.

ARTICLE X.

EXEMPTIONS.

204. The personal property of any resident of this State to the value of one thousand dollars, to be selected by such resident, shall be exempt from sale on execution or other process of any court, issued for the collection of any debt contracted since the thirteenth day of July, eighteen hundred and sixty-eight, or after the ratification of this Constitution.

205. Every homestead, not exceeding eighty acres, and the dwelling and appurtenances thereon, to be selected by the owner thereof, and not in any city, town or village, or in lieu thereof, at the option of the owner, any lot in a city, town or village, with the dwelling and appurtenances thereon owned and occupied by any resident of this State, and not exceeding the value of two thousand dollars, shall be exempt from sale on execution or any other process from a court; for any debt contracted since the thirteenth day of July, eighteen hundred and sixty-eight, or after the ratification of this Constitution. Such exemption, however, shall not extend to any mortgage lawfully obtained, but such mortgage or other alienation of said homestead by the owner thereof, if a married man, shall not be valid without the voluntary signature and assent of the wife to the same.

206. The homestead of a family, after the death of the owner thereof, shall be exempt from the payment of any debts contracted since the thirteenth day of July, eighteen hundred and sixty-eight, or after the ratification of this Constitution, in all cases, during the minority of the children.

207. The provisions of Sections 204 and 205 of this Constitution shall not be so construed as to prevent a laborers' lien for work done and performed for the person claiming such exemption, or a mechanics' lien for work done on the premises.

208. If the owner of a homestead die, leaving a widow, but no children, such homestead shall be exempt, and the rents and profits thereof shall inure to her benefit.

209. The real and personal property of any female in this

State, acquired before marriage, and all property, real and personal, to which she may afterwards be entitled by gift, grant, inheritance or devise, shall be and remain the separate estate and property of such female, and shall not be liable for any debts, obligations or engagements of her husband, and may be devised or bequeathed by her, the same as if she were a feme sole.

210. The right of exemption hereinbefore secured may be waived by an instrument in writing, and when such waiver relates to realty, the instrument must be signed by both the husband and the wife, and attested by one witness.

ARTICLE XI.

TAXATION.

211. All taxes levied on property in this State shall be assessed in exact proportion to the value of such property, but no tax shall be assessed upon any debt for rent or hire of real or personal property, while owned by the landlord or hirer during the current year of such rental or hire, if such real or personal property be assessed at its full value.

212. The power to levy taxes shall not be delegated to individuals or private corporations or associations.

213. After the ratification of this Constitution, no new debt shall be created against, or incurred by this State, or its authority, except to repel invasion or suppress insurrection, and then only by a concurrence of two-thirds of the members of each House of the Legislature, and the vote shall be taken by yeas and nays and entered on the Journals; and any act creating or incurring any new debt against this State, except as herein provided for, shall be absolutely void; provided, the Governor may be authorized to negotiate temporary loans, never to exceed three hundred thousand dollars, to meet the deficiencies in the treasury, and until the same is paid no new loan shall be negotiated; provided further, that this section shall not be so construed as to prevent the issuance of bonds for the purpose of refunding the existing bonded indebtedness of the State.

214. The Legislature shall not have the power to levy in any one year a greater rate of taxation than sixty-five one-hundredths of one per centum on the value of the taxable property within this State.

215. No county in this State shall be authorized to levy a greater rate of taxation in any one year on the value of the taxable property therein than one-half of one per centum; provided, that to pay debts existing on the sixth day of December, eighteen hundred and seventy-five, an additional rate of one-fourth of one per centum may be levied and collected which shall be appropriated exclusively to the payment of such debts and the interest thereon; provided further, that to pay any

debt or liability now existing against any county, incurred for the erection, construction, or maintenance of the necessary public buildings or bridges, or that may hereafter be created for the erection of necessary public buildings, bridges or roads, any county may levy and collect such special taxes, not to exceed one-fourth of one per centum, as may have been or may hereafter be authorized by law, which taxes so levied and collected shall be applied exclusively to the purposes for which the same were so levied and collected.

216. No city, town, village or other municipal corporation, other than as provided in this article, shall levy or collect a higher rate of taxation in any one year on the property situated therein than one-half of one per centum of the value of such property as assessed for State taxation during the preceding year; provided, that for the purpose of paying debts existing on the sixth day of December, eighteen hundred and seventy-five, and the interest thereon, a tax of one per centum may be levied and collected, to be applied exclusively to the payment of such indebtedness; and provided further, that this section shall not apply to the city of Mobile, which city may from and after the ratification of this Constitution, levy a tax not to exceed the rate of three-fourths of one per centum to pay the expenses of the city government, and may also levy a tax not to exceed three-fourths of one per centum to pay the debt existing on the sixth day of December, eighteen hundred and seventy-five, with interest thereon, or any renewal of such debt; and, provided further, that this section shall not apply to the cities of Birmingham, Huntsville and Bessemer, and the town of Andalusia, which cities and town may levy and collect a tax not to exceed one-half of one per centum in addition to the tax of one-half of one per centum as hereinbefore allowed to be levied and collected, such special tax to be applied exclusively to the payment of interest on bonds of said cities of Birmingham, Huntsville and Bessemer and town of Andalusia, respectively, heretofore issued in pursuance of law, or now authorized by law to be issued, and for a sinking fund to pay off said bonds at the maturity thereof; and provided further, that this section shall not apply to the city of Montgomery, which city shall have the right to levy and collect a tax of not exceeding one-half of one per centum per annum upon the value of the taxable property therein, as fixed for State taxation, for general purposes, and an additional tax of not exceeding three-fourths of one per centum per annum upon the value of the property therein, as fixed for State taxation, to be devoted exclusively to the payment of its public debt, interest thereon, and renewals thereof, and to the maintenance of its public schools, and public conveniences; and provided further, that this section shall not apply to Troy, Attalla, Gadsden, Woodlawn, Brewton, Pratt City, Ensley, Wylam, and Avondale, which cities and towns may from and

after the ratification of this Constitution, levy and collect an additional tax of not exceeding one-half of one per centum; and provided further, that this section shall not apply to the cities of Decatur, New Decatur and Cullman, which cities may from and after the ratification of this Constitution, levy and collect an additional tax of not exceeding three-tenths of one per centum per annum; such special tax of said city of Decatur to be applied exclusively for the public schools, public school buildings, and public improvements; and such special tax of New Decatur and Cullman to be applied exclusively for educational purposes, and to be expended under their respective boards of Public School Trustees; but this additional tax shall not be levied by Troy, Attalla, Gadsden, Woodlawn, Brewton, Pratt City, Ensley, Wylam, Avondale, Decatur, New Decatur, or Cullman unless authorized by a majority vote of the qualified electors voting at a special election held for the purpose of ascertaining whether or not said tax shall be levied; and provided further, that the purposes for which such special tax is sought to be levied shall be stated in such election call, and, if authorized, the revenue derived from such special tax shall be used for no other purpose than that stated; and provided further, that the additional tax authorized to be levied by the city of Troy, when so levied and collected, shall be used exclusively in the payment of the bonds and interest coupons thereon, hereafter issued in the adjustment of the present bonded indebtedness of said city; and provided further, that the additional tax authorized to be levied and collected by the city of Attalla shall, when so levied and collected, be used exclusively in the payment of bonds to the amount of not exceeding twenty-five thousand dollars, and the interest coupons thereon, hereafter to be issued in the adjustment of the present indebtedness of said city; provided further, that the governing boards of said cities, which are authorized to levy an additional tax after the holding of an election as aforesaid, are hereby authorized to provide by ordinance the necessary machinery for the holding of said election and declaring the result thereof.

217. The property of private corporations, associations and individuals of this State shall forever be taxed at the same rate; provided, this section shall not apply to institutions devoted exclusively to religious, educational or charitable purposes.

218. The Legislature shall not have the power to require counties or other municipal corporations to pay any charges which are now payable out of the State treasury.

219. The Legislature may levy a tax of not more than two and one-half per centum of the value of all estates, real and personal, money, public and private securities of every kind in this State, passing from any person who may die seized and possessed thereof, or of any part of such estate, money or se-

curities, or interest therein, transferred by the intestate laws of this State, or by will, deed, grant, bargain, sale or gift, made or intended to take effect in possession after death of the grantor, devisor, or donor, to any person or persons, bodies politic or corporate, in trust or otherwise, other than to or for the use of the father, mother, husband, wife, brothers, sisters, children or lineal descendants of the grantor, devisor, donor or intestate.

ARTICLE XII.

CORPORATIONS.

MUNICIPAL CORPORATIONS.

220. No person, firm, association or corporation shall be authorized or permitted to use the streets, avenues, alleys or public places of any city, town or village for the construction or operation of any public utility or private enterprise, without first obtaining the consent of the proper authorities of such city, town or village.

221. The Legislature shall not enact any law which will permit any person, firm, corporation or association to pay a privilege, license or other tax to the State of Alabama, and relieve him or it from the payment of all other privilege and license taxes in the State.

222. The Legislature, after the ratification of this Constitution, shall have authority to pass general laws authorizing the counties, cities, towns, villages, districts or other political subdivisions of counties to issue bonds, but no bonds shall be issued under authority of a general law unless such issue of bonds be first authorized by a majority vote by ballot of the qualified voters of such county, city, town, village, district, or other political subdivision of a county, voting upon such proposition. The ballot used at such election shall contain the words "For .... bond issue," and "Against .... bond issue," (the character of the bond to be shown in the blank space), and the voter shall indicate his choice by placing a cross mark before or after the one or the other. This section shall not apply to the renewal, refunding or reissue of bonds lawfully issued, nor to the issuance of bonds in cases where the same have been authorized by laws enacted prior to the ratification of this Constitution, nor shall this section apply to obligations incurred or bonds to be issued to procure means to pay for street and sidewalk improvements or sanitary or storm water sewers, the cost of which is to be assessed, in whole or in part, against the property abutting said improvements or drained by such sanitary or storm water sewers.

223. No city, town or other municipality shall make any assessment for the cost of sidewalks or street paving, or for the cost of the construction of any sewers against property abutting on such street or sidewalk so paved, or drained by

such sewers, in excess of the increased value of such property by reason of the special benefits derived from such improvements.

224. No county shall become indebted in an amount including present indebtedness, greater than three and one-half per centum of the assessed value of the property therein; provided, this limitation shall not affect any existing indebtedness in excess of such three and one-half per centum, which has already been created or authorized by existing law to be created; provided, that any county which has already incurred a debt exceeding three and one-half per centum of the assessed value of the property therein, shall be authorized to incur an indebtedness of one and a half per centum of the assessed value of such property in addition to the debt already existing. Nothing herein contained shall prevent any county from issuing bonds, or other obligations, to fund or refund any indebtedness now existing or authorized by existing laws to be created.

225. No city, town or other municipal corporation having a population of less than six thousand, except as hereafter provided, shall become indebted in an amount, including present indebtedness, exceeding five per centum of the assessed value of the property therein, except for the construction or purchase of water works, gas or electric lighting plants, or sewerage, or for the improvement of streets, for which purposes an additional indebtedness not exceeding three per centum may be created; provided, this limitation shall not affect any debt now authorized by law to be created, nor any temporary loans to be paid within one year, made in anticipation of the collection of taxes, not exceeding one-fourth of the annual revenues of such city or town. All towns and cities having a population of six thousand or more, also Gadsden, Ensley, Decatur, and New Decatur, are hereby authorized to become indebted in an amount including present indebtedness, not exceeding seven per centum of the assessed valuation of the property therein, provided that there shall not be included in the limitation of the indebtedness of such last described cities and towns the following classes of indebtedness, to-wit: Temporary loans, to be paid within one year, made in anticipation of the collection of taxes, and not exceeding one-fourth of the general revenues, bonds or other obligations already issued, or which may hereafter be issued for the purpose of acquiring, providing or constructing school houses, water works and sewers; and obligations incurred and bonds issued for street or sidewalk improvements, where the cost of the same, in whole or in part, is to be assessed against the property abutting said improvements; provided, that the proceeds of all obligations issued as herein provided, in excess of said seven per centum shall not be used for any purpose other than that for which said obligations were issued. Noth-

ing contained in this article shall prevent the funding or refunding of existing indebtedness. This section shall not apply to the cities of Sheffield and Tuscumbia.

226. No city, town or village, whose present indebtedness exceeds the limitation imposed by this Constitution, shall be allowed to become indebted in any further amount, except as otherwise provided in this Constitution, until such indebtedness shall be reduced within such limit; provided, however, that nothing herein contained shall prevent any municipality, except the city of Gadsden, from issuing bonds already authorized by law; provided further, that this section shall not apply to the cities of Sheffield and Tuscumbia.

227. Any person, firm, association or corporation, who may construct or operate any public utility along or across the public streets of any city, town or village, under any privilege or franchise permitting such construction or operation, shall be liable to abutting proprietors for the actual damage done to the abutting property on account of such construction or operation.

228. No city or town having a population of more than six thousand shall have authority to grant to any person, firm, corporation or association the right to use its streets, avenues, alleys, or public places for the construction or operation of water works, gas works, telephone or telegraph line, electric light or power plants, steam or other heating plants, street railroads, or any other public utility, except railroads other than street railroads for a longer period than thirty years.

229. The Legislature shall pass no special act conferring corporate powers, but it shall pass general laws under which corporations may be organized and corporate powers obtained, subject, nevertheless, to repeal at the will of the Legislature; and shall pass general laws under which charters may be altered or amended. The Legislature shall, by general law, provide for the payment to the State of Alabama of a franchise tax by corporations organized under the laws of this State, which shall be in proportion to the amount of capital stock; but strictly benevolent, educational or religious corporations shall not be required to pay such a tax. The charter of any corporation shall be subject to amendment, alteration or repeal under general laws.

230. All existing charters, under which a bona fide organization shall not have taken place and business commenced in good faith within twelve months from the time of the ratification of this Constitution, shall thereafter have no validity.

231. The Legislature shall not remit the forfeiture of the charter of any corporation now existing or alter or amend the same, nor pass any general or special law for the benefit of such corporation, other than in execution of a trust created by law or by contract, except upon condition that such corporation

shall thereafter hold its charter subject to the provisions of this Constitution.

232. No foreign corporation shall do any business in this State without having at least one known place of business and an authorized agent or agents therein, and without filing with the Secretary of State a certified copy of its articles of incorporation or association. Such corporation may be sued in any county where it does business, by service of process upon an agent anywhere in the State. The Legislature shall, by general law, provide for the payment to the State of Alabama of a franchise tax by such corporation, but such franchise tax shall be based on the actual amount of capital employed in this State. Strictly benevolent, educational or religious corporations shall not be required to pay such a tax.

233. No corporation shall engage in any business other than that expressly authorized in its charter or articles of incorporation.

234. No corporation shall issue stock or bonds except for money, labor done, or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased except in pursuance of general laws, nor without the consent of the persons holding the larger amount in value of stock, first obtained at a meeting to be held after thirty days' notice, given in pursuance of law.

235. Municipal and other corporations and individuals invested with the privilege of taking property for public use, shall make just compensation, to be ascertained as may be provided by law, for the property taken, injured or destroyed by the construction or enlargement of its works, highways or improvements, which compensation shall be paid before such taking, injury or destruction. The Legislature is hereby prohibited from denying the right of appeal from any preliminary assessment of damages against any such corporations or individuals made by viewers or otherwise, but such appeal shall not deprive those who have obtained the judgment of condemnation from a right of entry, provided the amount of damages assessed shall have been paid in the court in money, and a bond shall have been given in not less than double the amount of the damages assessed, with good and sufficient sureties, to pay such damages as the property owner may sustain; and the amount of damages in all cases of appeals shall on the demand of either party, be determined by a jury according to law.

236. Dues from private corporations shall be secured by such means as may be prescribed by law; but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her.

237. No corporation shall issue preferred stock without the consent of the owners of two-thirds of the stock of said corporation.

238. The Legislature shall have the power to alter, amend or revoke any charter of incorporation now existing and revocable at the ratification of this Constitution, or any that may be hereafter created, whenever, in its opinion, such charter may be injurious to the citizens of this State, in such manner, however, that no injustice shall be done to the stockholders.

239. Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph and telephone within this State, and connect the same with other lines; and the Legislature shall, by general law of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph or telephone company shall consolidate with or hold a controlling interest in the stock or bonds of any other telegraph or telephone company owning a complete line, or acquire, by purchase or otherwise, any other competing line of telegraph or telephone.

240. All corporations shall have the right to sue, and shall be subject to be sued, in all courts in like cases as natural persons.

241. The term "corporation," as used in this article, shall be construed to include all joint stock companies, and all associations having any of the powers or privileges of corporations, not possessed by individuals or partnerships.

RAILROADS AND CANALS.

242. All railroads and canals not constructed and used exclusively for private purposes, shall be public highways, and all railroad and canal companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railway between any points in this State, and connect at the State line, with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and each shall receive and transport the freight, passengers and cars, loaded or empty, of the others, without delay or discrimination.

243. The power and authority of regulating railroad freight and passenger tariffs, the locating and building of passenger and freight depots, correcting abuses, preventing unjust discrimination and extortion and requiring reasonable and just rates of freight and passenger tariffs, are hereby conferred upon the Legislature, whose duty it shall be to pass laws from time to time regulating freight and passenger tariffs, to prohibit unjust discrimination on the various railroads, canals and rivers of the State, and to prohibit the charging of other than just and reasonable rates and enforce the same by adequate penalties.

244. No railroad or other transportation company or corporation shall grant free passes or sell tickets or passes at a discount, other than as sold to the public generally, to any member of the Legislature or to any officer exercising judicial func-

tions under the laws of this State; and any such member or officer receiving such a pass or ticket for himself, or procuring the same for another, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding five hundred dollars, and at the discretion of the court trying the case, in addition to such fine, may imprison for a term not exceeding six months, and upon conviction, shall be subject to impeachment and removal from office. The courts having jurisdiction shall give this law specially in charge to the Grand Juries, and when the evidence is sufficient to authorize an indictment, the Grand Jury must present a true bill. The Circuit Court or any court of like jurisdiction in any county into or through which such member or officer is transported by the use of such prohibited pass or ticket, shall have jurisdiction of the case, provided only one prosecution shall be had for the same offense; and provided further, that the trial and judgment for one offense shall not bar a prosecution for another offense when the same pass or ticket is used; and provided further, that nothing herein shall prevent a member of the Legislature who is a bona fide employe of a railroad or other transportation company or corporation at the time of his election, from accepting or procuring for himself or another, not a member of the Legislature, or officer exercising judicial functions, a free pass over the railroads or other transportation company or corporation by which he is employed.

245. No railroad company shall give or pay any rebate, or a bonus in the nature thereof, directly or indirectly, or do any act to mislead or deceive the public as to the real rates charged or received for freights or passage; and any such payments shall be illegal and void, and these prohibitions shall be enforced by suitable penalties.

246. No railroad, canal or transportation company in existence at the time of the ratification of this Constitution, shall have the benefit of any future legislation by general or special laws other than in execution of a trust created by law or by contract, except on the condition of complete acceptance of all the provisions of this article.

ARTICLE XIII.

BANKS AND BANKING.

247. The Legislature shall not have the power to establish or incorporate any bank or banking company or moneyed institution for the purpose of issuing bills of credit or bills payable to order or bearer, except under the conditions prescribed in this Constitution.

248. No bank shall be established otherwise than under a general banking law, nor other than upon a specie basis; provided, that any bank may be established with authority to issue bills to circulate as money in an amount equal to the face value of bonds of the United States, or of this State, convertible into

specie at their face value, which shall, before such bank is authorized to issue bills for circulation, be deposited with the State Treasurer or other depository prescribed by law, in an amount equal to the aggregate of such proposed issue, with power in such treasurer or depository to dispose of any or all of such bonds for a sufficient amount of specie to redeem the circulating notes of such bank at any time and without delay, should such bank suspend specie payment or fail to redeem its notes on demand.

249. All bills or notes issued as money shall be at all times redeemable in gold or silver, and no law shall be passed sanctioning directly or indirectly, the suspension by any bank or banking company of specie payment.

250. Holders of bank notes, and depositors who have not stipulated for interest, shall, for such notes and deposits, be entitled in case of insolvency, to preference of payment over all other creditors; provided, this section shall apply to all banks whether incorporated or not.

251. Every bank or banking company shall be required to cease all banking operations within twenty years from the time of its organization, unless the time be extended by law, and promptly thereafter close its business; but after it has closed its business it shall have corporate capacity to sue and shall be liable to suits until its affairs and liabilities are fully closed.

252. No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed by law to individuals for lending money.

253. Neither the State nor any political subdivision thereof, shall be a stockholder in any bank, nor shall the credit of the State or any political subdivision thereof be given or lent to any banking company, association or corporation.

254. The Legislature shall by appropriate laws provide for the examination, by some public officer, of all banks and banking institutions and trust companies engaged in banking business in this State; and each of such banks and banking companies or institutions shall, through its president, or such other officer as the Legislature may designate, make a report under oath of its resources and liabilities at least twice a year.

255. The provisions of this article shall apply to all banks except National banks, and to all trust companies and individuals doing a banking business, whether incorporated or not.

ARTICLE XIV.

EDUCATION.

256. The Legislature shall establish, organize and maintain a liberal system of public school throughout the State for the benefit of the children thereof between the ages of seven and twenty-one years. The public school fund shall be apportioned to the several counties in proportion to the number of school

children of school age therein, and shall be so apportioned to the schools in the districts or township in the counties as to provide, as nearly as practicable, school terms of equal duration in such school districts or townships. Separate schools shall be provided for white and colored children, and no child of either race shall be permitted to attend a school of the other race.

257. The principal of all funds arising from the sale or other disposition of lands or other property, which has been or may hereafter be granted or entrusted to this State or given by the United States for educational purposes, shall be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific object of the original grants or appropriations.

258. All lands or other property given by individuals, or appropriated by the State for educational purposes, and all estates of deceased persons who die without leaving a will or heir shall be faithfully applied to the maintenance of the public schools.

259. All poll taxes collected in this State shall be applied to the support of the public schools in the respective counties where collected.

260. The income arising from the Sixteenth Section trust fund, the surplus revenue fund, until it is called for by the United States government, and the funds enumerated in Sections 257 and 258 of this Constitution, together with a special annual tax of thirty cents on each one hundred dollars of taxable property in this State, which the Legislature shall levy, shall be applied to the support and maintenance of the public schools, and it shall be the duty of the Legislature to increase the public school fund from time to time as the necessity therefor and the condition of the treasury and the resources of the State may justify; provided, that nothing herein contained shall be so construed as to authorize the Legislature to levy in any one year a greater rate of State taxation for all purposes including schools than sixty-five cents on each one hundred dollars worth of taxable property; and provided further, that nothing herein contained shall prevent the Legislature from first providing for the payment of the bonded indebtedness of the State and interest thereon out of all the revenues of the State.

261. Not more than four per cent. of all moneys raised or which may hereafter be appropriated for the support of public schools, shall be used or expended otherwise than for the payment of teachers employed in such schools; provided, that the Legislature may, by a vote of two-thirds of each House, suspend the operation of this section.

262. The supervision of the public schools shall be vested in a Superintendent of Education, whose powers, duties and compensation shall be fixed by law.

263. No money raised for the support of the public schools shall be appropriated to or used for the support of any sectarian or denominational school.

264. The State University shall be under the management and control of a board of trustees, which shall consist of two members from the Congressional district in which the University is located, one from each of the other Congressional districts in the State, the Superintendent of Education, and the Governor, who shall be ex-officio president of the board. The members of the Board of Trustees as now constituted shall hold office until their respective terms expire under existing law, and until their successors shall be elected and confirmed as hereinafter required. Successors to those trustees whose terms expire in nineteen hundred and two shall hold office until nineteen hundred and seven; successors to those trustees whose terms expire in nineteen hundred and four shall hold office until nineteen hundred and eleven; successors to those trustees whose terms expire in nineteen hundred and six shall hold office until nineteen hundred and fifteen; and thereafter their successors shall hold office for a term of twelve years. When the term of any member of such board shall expire, the remaining members of the board shall, by secret ballot, elect his successor; provided, that any trustee so elected shall hold office from the date of his election until his confirmation or rejection by the Senate, and, if confirmed, until the expiration of the term for which he was elected, and until his successor is elected. At every meeting of the Legislature the Superintendent of Education shall certify to the Senate the names of all who have been so elected since the last session of the Legislature, and the Senate shall confirm or reject them, as it shall determine is for the best interest of the University. If it reject the names of any members, it shall thereupon elect trustees in the stead of those rejected. In case of a vacancy on said board by death or resignation of a member, or from any cause other than the expiration of his term of office, the board shall elect his successor who shall hold office until the next session of the Legislature. No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such.

265. After the ratification of this Constitution there shall be paid out of the treasury of this State at the time and in the manner provided by law, the sum of not less than thirty-six thousand dollars per annum as interest on the funds of the University of Alabama, heretofore covered into the treasury, for the maintenance and support of said institution; provided, that the Legislature shall have the power at any time they deem proper for the best interest of said University to abolish the military system at said institution or reduce the said system to a department of instruction, and that such action on the part of the Legislature shall not cause any diminution of the amount of the annual interest payable out of the treasury for the support and maintenance of said University.

266. The Alabama Polytechnic Institute, formerly called the Agricultural and Mechanical College, shall be under the management and control of a Board of Trustees, which shall consist of two members from the Congressional district in which the institute is located, and one from each of the other Congressional districts in the State, the State Superintendent of Education and the Governor shall be ex-officio president of the board. The trustees shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall hold office for a term of twelve years, and until their successors shall be appointed and qualified. The board shall be divided into three classes, as nearly equal as may be, so that one-third may be chosen quadriennially. Vacancies occurring in the office of trustees from death or resignation, and the vacancies regularly occurring in the year nineteen hundred and five shall be filled by the Governor, and such appointee shall hold office until the next meeting of the Legislature. Successors to those trustees whose terms expire in nineteen hundred and three shall hold office until nineteen hundred and eleven; successors to those whose terms expire in nineteen hundred and five shall hold office until nineteen hundred and fifteen; and successors to those whose terms expire in nineteen hundred and seven shall hold office until nineteen hundred and nineteen. No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such.

267. The Legislature shall not have power to change the location of the State University, or the Alabama Polytechnic Institute, or the Alabama school for the Deaf and Blind, or the Alabama Girls' Industrial school, as now established by law, except upon a vote of two-thirds of the Legislature taken by yeas and nays and entered upon the Journals.

268. The Legislature shall provide for taking a school census by townships and districts throughout the State not oftener than once in two years, and shall provide for the punishment of all persons or officers making false or fraudulent enumerations and returns; provided, the State Superintendent of Education may order and supervise the taking of a new census in any township, district or county, whenever he may have reasonable cause to believe that false or fraudulent returns have been made.

269. The several counties in this State shall have power to levy and collect a special tax not exceeding ten cents on each one hundred dollars of taxable property in such counties, for the support of public schools; provided, that the rate of such tax, the time it is to continue, and the purpose thereof, shall have been first submitted to a vote of the qualified electors of the county, and voted for by three-fifths of those voting at such election; but the rate of such special tax shall not increase the rate of taxation, State and county combined, in any one year, to more than one dollar and twenty-five cents on each one hun-

dred dollars of taxable property; excluding, however, all special county taxes for public buildings, roads, bridges, and the payment of debts existing at the ratification of the Constitution of eighteen hundred and seventy-five. The funds arising from such special school tax shall be so apportioned and paid through the proper school officials to the several schools in the townships and districts in the county that the school terms of the respective schools shall be extended by such supplement as nearly the same length of time as practicable; provided, that this section shall not apply to the cities of Decatur, New Decatur and Cullman.

270. The provisions of this article and of any act of the Legislature passed in pursuance thereof to establish, organize and maintain a system of public schools throughout the State, shall apply to Mobile county only so far as to authorize and require the authorities designated by law to draw the portions of the funds to which said county shall be entitled for school purposes and to make reports to the Superintendent of Education as may be prescribed by law; and all special incomes and powers of taxation as now authorized by law for the benefit of public schools in said county shall remain undisturbed until otherwise provided by the Legislature; provided, that separate schools for each race shall always be maintained by said school authorities.

ARTICLE XV.

MILITIA.

271. The Legislature shall have power to declare who shall constitute the militia of the State, and to provide for organizing, arming and disciplining the same; and the Legislature may provide for the organization of a State and Naval Militia.

272. The Legislature, in providing for the organization, equipment and discipline of the militia, shall conform as nearly as practicable to the regulations for the government of the armies of the United States.

273. Each company and regiment shall elect its own company and regimental officers; but if any company or regiment shall neglect to elect such officers within the time prescribed by law, they may be appointed by the Governor.

274. Volunteer organizations of infantry, cavalry, and artillery and naval militia may be formed in such manner and under such restrictions and with such privileges as may be provided by law.

275. The militia and volunteer forces shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at musters, parades and elections and in going to and returning from the same.

276. The Governor shall, with the advice and consent of the Senate, appoint all general officers, whose terms of office shall be four years. The Governor, the generals and regimental and batallion commanders shall appoint their own staffs, as may be provided by law.

277. The Legislature shall provide for the safe keeping of the arms, ammunition and accoutrements, and military records, banners and relics of the State.

278. The officers and men of the militia and volunteer forces shall not be entitled to or receive any pay, rations or emoluments when not in active service.

ARTICLE XVI.

OATH OF OFFICE.

279. All members of the Legislature, and all officers, executive and judicial, before they enter upon the execution of the duties of their respective offices, shall take the following oath or affirmation.

"I....., solemnly swear (or affirm, as the case may be), that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability. So help me God."

The oath may be administered by the presiding officer of either House of the Legislature, or by any officer authorized by law to administer an oath.

ARTICLE XVII.

MISCELLANEOUS PROVISIONS.

280. No person holding an office of profit under the United States, except postmasters, whose annual salaries do not exceed two hundred dollars, shall during his continuance in such office hold any office of profit under this State; nor, unless otherwise provided in this Constitution, shall any person hold two offices of profit at one and the same time under this State, except Justices of the eace, Constables, Notaries Public, and Commissioners of Deeds.

281. The salary, fees or compensation of any officer holding any civil office of profit under this State or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed.

282. It is made the duty of the Legislature to enact all laws necessary to give effect to the provisions of this Constitution.

283. The act of the General Assembly of Alabama entitled "An Act to consolidate and adjust the bonded debt of the State of Alabama," approved February 18th, 1895, and an act amendatory thereof entitled "An Act to amend Section 6 of an act to consolidate and adjust the bonded debt of the State of Alabama, approved February 18th, 1895," which said last named act was approved February 16th, 1899, are hereby made valid, and both of said acts shall have the full force and effect of law, except insofar as they authorize the redemption before maturity of the bonds authorized by said acts to be issued. The Governor is authorized and empowered to act under the same and to carry out all the provisions thereof; provided, that the bonds authorized to be issued by said acts and issued thereunder may be made payable at any time, not exceeding fifty years from the date thereof, and shall not be redeemable until their maturity.

ARTICLE XVIII.

MODE OF AMENDING THE CONSTITUTION.

284. Amendments may be proposed to this Constitution by the Legislature in the manner following: The proposed amendments shall be read in the House in which they originate on three several days, and if upon the third reading three-fifths of all the members elected to that House shall vote in favor thereof, the proposed amendments shall be sent to the other House, in which they shall likewise be read on three several days, and if upon the third reading three-fifths of all the members elected to that House shall vote in favor of the proposed amendments, the Legislature shall order an election by the qualified electors of the State upon such proposed amendments, to be held either at the general election next succeeding the session of the Legislature at which the amendments are proposed or upon another day appointed by the Legislature not less than three months after the final adjournment of the session of the Legislature at which the amendments were proposed. Notice of such election, together with the proposed amendments, shall be given by proclamation of the Governor, which shall be published in every county in such manner as the Legislature shall direct, for at least eight successive weeks next preceding the day appointed for such election. On the day so appointed an election shall be held for the vote of the qualified electors of the State upon the proposed amendments. If such election be held on the day of the general election, the officers of such

general election shall open a poll for the vote of the qualified electors upon the proposed amendments; if it be held on a day other than that of a general election, officers for such election shall be appointed; and the election shall be held in all things in accordance with the law governing general elections. In all elections upon such proposed amendments, the votes cast thereat shall be canvassed, tabulated, and returns thereof be made to the Secretary of State, and counted, in the same manner as in elections for Representatives to the Legislature; and if it shall thereupon appear that a majority of the qualified electors who voted at such election upon the proposed amendments voted in favor of the same, such amendments shall be valid to all intents and purposes as parts of this Constitution. The result of such election shall be made known by proclamation of the Governor. Representation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendment.

285. Upon the ballots used at all elections provided for in Section 284 of this Constitution the substance or subject matter of each proposed amendment shall be so printed that the nature thereof shall be clearly indicated. Following each proposed amendment on the ballot shall be printed the word "Yes" and imemdiately under that shall be printed the word "No." The choice of the elector shall be indicated by a cross mark made by him or under his direction, opposite the word expressing his desire, and no amendment shall be adopted unless it receives the affirmative vote of a majority of all the qualified electors who vote at such election.

286. No convention shall hereafter be held for the purpose of altering or amending the Constitution of this State, unless after the Legislature by a vote of a majority of all the members elected to each House has passed an act or resolution calling a Convention for such purpose, the question of Convention or No Convention shall be first submitted to a vote of all the qualified electors of the State, and approved by a majority of those voting at such election. No act or resolution of the Legislature calling a convention for the purpose of altering or amending the Constitution of this State, shall be repealed except upon the vote of a majority of all the members elected to each House at the same session at which such act or resolution was passed; provided, nothing herein contained shall be construed as restricting the jurisdiction and power of the convention, when duly assembled in pursuance of this section, to establish such ordinances and to do and perform such things as to the convention may seem necessary or proper for the purpose of altering, revising or amending the existing Constitution.

287. All votes of the Legislature upon proposed amendments to this Constitution, and upon bills or resolutions calling a Convention for the purpose of altering or amending the Constitution of this State, shall be taken by yeas and nays and entered on the Journals. No act or resolution of the Legislature passed in accordance with the provisions of this article, proposing amendments to this Constitution, or calling a convention for the purpose of altering or amending the Constitution of this State, shall be submitted for the approval of the Governor, but shall be valid without his approval.

SCHEDULE.

In order that no injury or inconvenience may arise from the alterations and amendments made by this Constitution to the existing Constitution of this State, and to carry this Constitution into effect, it is hereby ordained and declared:

1.—That all laws in force at the ratification of this Constitution and not inconsistent therewith, shall remain in full force until altered or repealed by the Legislature; and all rights, actions, prosecutions, claims and contracts of the State, counties, municipal corporations, individuals or bodies corporate, not inconsistent with this Constitution, shall continue to be valid as if this Consttution had not been ratified.

2.—That all bonds executed by or to any officer of this State, all recognizances, obligations and all other instruments executed to this State, or to any subdivision or municipality thereof, before the ratification of this Constitution, and all fines, taxes, penalties and forfeitures due and owing to the State, or any subdivision or municipality thereof; and all writs, suits, prosecutions, claims and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the ratification of this Constitution. All indictments which have been found, or which may hereafter be found, for any crime or offense committed before the ratification of this Constitution, shall be proceeded upon in the same manner as if this Constitution had not been ratified.

3.—That all the executive and judicial officers, and all other officers in this State, who were elected at the elections held in this State on the first Monday in August, in the years eighteen hundred and ninety-eight and nineteen hundred, or who have been appointed since that time, and all members of the present General Assembly, and all who may be hereafter elected members of the present General Assembly, and all other officers holding office at the time of the ratification of this Constitution, shall, except as otherwise provided in this Constitution, continue in office and exercise the duties thereof until their respect-

ive terms shall expire, as provided by the Constitution of eighteen hundred and seventy-five, or the laws of this State.

4.—This Constitution shall be submitted to the qualified electors of this State for ratification or rejection, as authorized and required by an act of the General Assembly of this State, entitled "An Act to provide for holding a convention to revise and amend the Constitution of this State," approved the eleventh day of December, nineteen hundred; and no elector shall be deprived of his right to vote at the election to be held for such purpose by reason of his not being registered.

5.—That instead of the publication as required by the act to provide for holding a convention to revise and amend the Constitution, approved the eleventh day of December, nineteen hundred, the Governor of this State is hereby authorized to take such steps as will give general publicity and circulation to this Constitution in a manner as economical as practicable.

6.—The salaries of the Executive and Judicial and all other officers of this State, who may be holding office at the time of the ratification of this Constitution, and the pay of the present members of the General Assembly, shall not be affected by the provisions of this Constitution.

Done by the people of Alabama, through their delegates in convention assembled in the hall of the House of Representatives, at Montgomery, Alabama, this, the third day of September, Anno Domini, nineteen hundred and one.

JOHN B. KNOX, *President.*

Attest: FRANK N. JULIAN, *Secretary.*

David C. Almon,
W. A. Altman,
John T. Ashcraft,
W. H. Banks,
J. H. Barefield,
W. H. Bartlett,
J. Robert Beavers,
C. P. Beddow,
D. S. Bethune,
Samuel Blackwell,
Burwell Boykin Boone,
Leslie E. Brooks,
Cecil Browne,
Thomas L. Bulger,
John D. Burnett,
John F. Burns (1875-1901),
John A. Byars,
H. W. Cardon,

A. H. Carmichael,
M. S. Carmichael,
G. H. Carnathan,
Davy Crockett Case,
Reuben Chapman,
James Edward Cobb,
W. T. L. Cofer,
Thomas W. Coleman,
E. W. Coleman,
Thomas J. Cornwell,
B H. Craig,
R. M. Cunningham,
John A. Davis,
Hubert T. Davis,
S. H. Dent,
Ed. deGraffenried,
Joseph B. Duke,
B. T. Eley,
John C. Eyster,
T. M. Espy,
Charles W. Ferguson,
William C. Fitts,
A. S. Fletcher,
J. M. Foster,
N. H. Freeman,
J. A. Gilmore,
William Franklin Glover,
Edward A. Graham,
Joseph B. Graham,
L. W. Grant,
John W. Grayson,
Leonard F. Greer, Sr.,
Charles H. Greer,
C. L. Haley,
William A. Handley,
Geo. P. Harrison (1875-1901),
J. Thomas Heflin,
John T. Heflin,
Jere C. Henderson,
Evans Hinson,
Patrick W. Hodges,
Oliver R. Hood,
Wilson P. Howell,
Augustin Clayton Howze,
W. B. Inge,
E. C. Jackson,
Samuel C. Jenkins,
John C. Jones,
J. McLean Jones,
Thomas G. Jones,
Richard C. Jones,
James T. Kirk,
W. W. Kirkland,
William N. Knight,
R. B. Kyle,
Emmett W. Ledbetter,
Norville R. Leigh, Jr.,
Lawrence W. Locklin,
Tennent Lomax,
J. Lee Long,

T. L. Long,
Robert J. Lowe,
William T. Lowe,
Gordon Macdonald,
B. F. McMillan,
Lee McMillan,
George H. Malone,
J. T. Martin,
J. C. Maxwell,
Allen H. Merrill,
Charles H. Miller,
Joseph N. Miller,
Milo Moody,
W. O. Mulkey,
Joel D. Murphree (1875-1901),
C. C. NeSmith,
J. D. Norman,
Joseph Norwood,
Wm. C. Oates (1875-1901),
Emmett O'Neal,
John W. O'Neil,
Henry Opp,
Rufus A. O'Rear,
Dabney Palmer,
George H. Parker,
John H. Parker, Sr.,
James P. Pearce,
Erle Pettus,
E. A. Phillips,
Harry Pillans,
P. H. Pitts,
John H. Porter,
John Franklin Proctor,
Henry Fontaine Reese (Dallas),
N. P. Renfro,
R. J. Reynolds,
J. J. Robinson,
C. P. Rogers, Sr.,
John Aduston Rogers of Sumter County, Ala.
Wm. Hodges Samford,
W. T. Sanders,
John William Augustine Sanford,
George A. Searcy,
Henry C. Selheimer,
James O. Sentell,
J. B. Sloan, Jr.,
Gregory L. Smith,
Mac. A. Smith,
Morgan M. Smith,
M. Sollie,
George A. Sorrell,
Napoleon B. Spears,
Robert E. Spragins,
J. H. Stewart,
W. H. Tayloe,
J. F. Thompson,
Watkins M. Vaughan,
Boswell deGraffenried Waddell,
Richard W. Walker,

Thomas H. Watts,
John B. Weakley,
James Weatherly,
Frank S. White,
W. W. Whiteside,
Jere N. Williams,
Gesner Williams (Marengo),
Arthur E. Williams,
Massey Wilson,
Edward P. Wilson,
James J. Winn,
E. R. Morrisette,
E. D. Willett.

27589

Supreme Court of the United States.

Nos. 337 and 338.—October Term, 1903.

Jackson W. Giles, Plaintiff in Error,
No. 337. *vs.*
Charles B. Teasley et al., Board of Registrars of Montgomery County, Alabama.

Jackson W. Giles, Plaintiff in Error,
No. 338. *vs.*
Charles B. Teasley et al., Board of Registrars of Montgomery County, Alabama.

} In error to the Supreme Court of the State of Alabama.

[February 23, 1904]

These cases are writs of error to the Supreme Court of the State of Alabama.

In No. 337, the action was brought to recover damages in the sum of $5,000 against the board of registrars of Montgomery County, Alabama, for refusing to register the plaintiff as a qualified elector of the State. The substance of the complaint is: The plaintiff is a native of the State of Alabama, a resident of Montgomery County for thirty years, and of the voting precinct for more than two years. He applied for registration, having theretofore enjoyed the right of voting in the State; the application was made to the board of registrars on March 13, 1902; the plaintiff complied with all reasonable requirements of the board, but was arbitrarily refused the right of registration for no other reason than his race and color. At the same time a large number of negroes similarly situated were likewise refused, while all the white men were registered and given certificates, without denial, nor was any question raised as to their qualifications. The registrars required the plaintiff and all members of his race to furnish the testimony of two white men as to their qualifications and refused to accept the testimony of colored persons, while all the white men were registered without any proof except the oath of the applicant. It is alleged that sections 180, 181, 183, 184, 185, 186, 187 and 188 of article 8 of the constitution of the State of Alabama, which went into effect November 28, 1901, under authority of which the registrars were acting, was intended, designed and enacted by the constitutional convention to deny and abridge the right of the plaintiff and others of his race in the State to vote, solely on account of race, color and previous condition of servitude. The convention of the State of Alabama was composed entirely of white men, although the population of the State is composed of 1,001,152 white and

827,545 colored persons. It is alleged that article 180 of said constitution is repugnant to the Fourteenth and Fifteenth Amendments to the Constitution of the United States because subdivisions one and two of said section do not contain a statement of qualifications applicable to all, regardless of race, color and previous condition of servitude, but discriminate against negroes solely on account of race. Subdivision three is unreasonable and void, *in not defining what character a good citizen must have* and what obligations he must understand under a republican form of government, and gives to the registrars a wide discretion and authority and invests them with arbitrary power. That section 181 of article 8 is repugnant to the said amendments to the Constitution of the United States in that, while it pretends to describe the qualifications of persons who shall apply for registration after January 1, 1903, it was in truth and in effect enacted to apply to the plaintiff and all negroes of the State, and not to operate against and affect any white persons in the State, and is a part of a scheme to disfranchise the negroes of Alabama on account of race, color and previous condition of servitude. By refusing to permit the negroes to register the board of registrars is forcing them to wait until January 1, 1903, when section 181 comes into effect. It is charged that said board is composed exclusively of white men, and the right of appeal given from the action of said board to the Circuit Court and thence to the Supreme Court of the State was given to more effectually hinder the plaintiff and others of his race in their right to vote and not to accomplish their registration. The negroes are excluded from serving on juries in the trial courts of the State and have been for many years, although qualified for the service, on account of race, color and previous condition of servitude. That on appeal the plaintiff would encounter the same prejudice and obtain the same result as before the board of registrars. The defendants, well knowing the object of the constitutional provisions, were appointed by the State to administer the same, and while so engaged did wilfully and wrongfully refuse to register the plaintiff and others of his race for no other reason than their race and color, and thus deprived them of the right to vote as electors of the State, contrary to the provisions of the first section of the Fifteenth Amendment to the Constitution of the United States.

In No. 338, the petition for mandamus contains like allegations as to the right of the petitioner to be registered as a voter in the State of Alabama, and avers that he is a person of good character and understands the duties of citizenship under a republican form of government. The petitioner avers, as in his petition for damages, his application to be registered March 13, 1902, which was arbitrarily refused for the reasons set forth in the petition for damages, contrary to the right of the petitioner. He repeats the allegations as to the registration of white persons, and avers that the denial of registration to him and others of his race was a denial by the State of

Alabama of the equal protection of the laws and the denial of his right to vote solely on account of his race, color and previous condition of servitude, and was in violation of the Fourteenth and Fifteenth Amendments to the Constitution of the United States. Allegations are inserted as to the intent and purpose of the State in calling the constitutional convention and the adoption of the constitution September 3, 1901. It is alleged that the sections 180, 181, 183, 184, 185, 186, 187 and 188 of article 8 of said new constitution were enacted with the intent and for the purpose set forth in the petition for damages. Allegations are set forth as to the exclusion of the negroes from representation, notwithstanding the part they compose of the population of the State. It is claimed that section 180 of article 8 is obnoxious and repugnant to the Fourteenth and Fifteenth Amendments to the Constitution of the United States, in that it divides the inhabitants into three classes, viz: 1, soldiers' class; 2, descendants of soldiers' class; 3, a class not soldiers nor their descendants. That the class not soldiers or their descendants are under greater restrictions and given greater burdens than the other classes. That section three is void and unreasonable, failing to define what duties and obligations a citizen must understand under a republican form of government, and gives too wide a discretion to the registrars, amounting to vesting them with arbitrary power. Subdivisions 1 and 2 do not contain a statement of qualifications which are applicable to all alike, but discriminate against the negroes of the State on account of race, color and previous condition of servitude. The petition in mandamus contains substantially the allegations of the petition for damages as to the manner in which the constitution was adopted, and avers that section 181, describing the qualifications of persons who apply for registration after January 1, 1903, was designed and intended to apply to petitioner and others of his race and not intended to operate against and affect white persons in the State of Alabama. It is charged that in the counties of Alabama colored persons are refused registration, while, under the same circumstances and possessing the same qualifications, white men are registered without objection, thereby compelling colored men to wait until January 1, 1903, when the provisions of section 181 will be in operation, and compelling the colored men to have greater and different qualifications than are imposed upon the white men in the State, all of which, it is charged, was in pursuance of a design to evade the terms of the Fourteenth and Fifteenth Amendments to the Constitution of the United States, and to deny to the plaintiff and others of his race the equal protection of the laws, and to deprive them of the right to vote solely on account of their race, color and previous condition of servitude. Petitioner repeats the allegations of the former petition for damages as to the composition of the board of registrars, and the remedy of appeal from their action to the courts of the State, and claims that if such appeal was prosecuted it could not be heard and deter-

mined before the election, but the hearing of the cases would take many years. There are attached to the petition as exhibits extracts from the speeches and debates in the convention of Alabama. The petition charges that the board of registrars refused to register colored men, so that not less than 75,000 of such persons were denied registration solely on account of race, color and previous condition of servitude, although possessing the necessary qualifications of electors, while the white men were permitted to register without let or hindrance. Affidavits were filed with the petition setting forth the denial of the right of colored persons in various counties in the State of Alabama. The prayer of the petition is that the aforesaid sections of the State constitution be declared absolutely null and void as repugnant to the Fourteenth and Fifteenth Amendments to the Constitution of the United States, and for a writ of mandamus commanding the board of registrars to register the plaintiff as a qualified voter of the State of Alabama, and to issue to him a certificate of the fact, and the like to all voters of his race in the State of Alabama who were such under the constitution of the State prior to the adoption of sections 180, 181, 183, 184, 185, 186, 187 and 188 of the new constitution of the State. And that said board be further commanded not to refuse to register said petitioner or other members of his race on account of their race or color and previous condition of servitude.

To the petitions in both cases demurrers were filed in the court of original jurisdiction, which were sustained, and upon appellate proceedings in the Supreme Court of the State of Alabama the decisions of the lower court were affirmed. These writs of error seek to bring this action of the State courts in review here.

Mr. Justice DAY, after making the foregoing statement, delivered the opinion of the Court.

The right to review in this court the judgment of a State court is regulated by section 709 of the Revised Statutes. The extent and nature of the remedy therein given has been the subject of numerous decisions. The jurisdiction in the cases now under consideration is invoked because of alleged denial of the rights of the plaintiff in error, secured to him by the Fourteenth and Fifteenth Amendments to the Constitution of the United States. When the jurisdiction depends, as in the present cases, upon a right, privilege or immunity under the Constitution of the United States specially set up and denied in the State court, certain propositions, it is said by Mr. Chief Justice Fuller, speaking for the court in *Sayward* v. *Denny*, (158 U. S. 180–183,) are well settled, among others, "The right on which the party relies must have been called to the attention of the court in some proper way and the decision of the court must have been against the right, (*Hoyt* v.

Sheldon, 1 Black, 518; *Maxwell* v. *Newhold*, 18 How. 511, 515;) or, at all events, it must appear from the record, by clear and necessary intendment, that the Federal question was directly invoked so that the State court could not have given judgment without deciding it." It is equally well settled that if the decision of a State court rests on an independent ground—one which does not necessarily include a determination of the Federal right claimed—or upon a ground broad enough to sustain it without deciding the Federal question raised, this court has no jurisdiction to review the judgment of the State court. (*New Orleans* v. *New Orleans Waterworks Co.*, 142 U. S. 49; *Eustis* v. *Bolles*, 150 U. S. 361; *Dower* v. *Richards*, 151 U. S. 658–666; *Wade* v. *Lawder*, 165 U. S. 624–628.)

In every case which comes to this court on writ of error or appeal the question of jurisdiction must be first answered, whether propounded by counsel or not. (*Defiance Waterworks Company* v. *Defiance*, decided at this term, 191 U. S. 184.) In No. 337, in which an action was begun against the registrars for damages, the case was decided upon demurrer to the declaration. The Supreme Court of Alabama placed its decision affirming the lower court, which sustained the demurrer, upon two grounds, as follows:

"If we accept (without deciding) as correct the insistence laid in appellant's brief that section 186 of article VIII of the constitution of 1901 is void because repugnant to the Fourteenth and Fifteeth Amendments of the Constitution of the United States, then the defendants were wholly without authority to register the plaintiff as a voter, and their refusal to do so cannot be made the predicate for a recovery of damages against them.

"On the other hand, if that section is the source of their authority, the jurisdiction is expressly conferred by it upon the defendants as a board of registrars to determine the qualifications of plaintiff as an elector and of his right to be registered as a voter. For their judicial act of refusing to register him predicated upon that determination, they are not liable in this action. (17 Am. & Eng. Ency. Law (2d ed.) pp. 727, 728, and notes.)—Affirmed." (136 Ala. 164.)

A consideration of the plaintiff's petition shows that it attacked the provisions of the Alabama constitution regulating the qualifications and registration of the electors of the State as an attempt to disregard the provisions of the Fourteenth and Fifteenth Amendments to the Constitution of the United States, by qualifying the whites to exercise the elective franchise and denying the same rights to the negroes of the State. It is alleged that sections 180, 181, 182, 184, 185, 186, 187 and 188 of the Alabama constitution, which took effect on November 28, 1901, and under which the defendants were appointed registrars, and were acting at the time, were enacted by the State of Alabama, through its delegates to the constitutional convention, to deny and abridge the right of the plaintiff and others of his race to vote in the State on account of their color and previous condition of servitude, without disfranchising a single white man in the State.

These sections of the Alabama constitution were before this court in the case of *Giles* v. *Harris*, (189 U. S. 475,) and the general plan of voting and registration was summarized by Mr. Justice Holmes, delivering the opinion of the court as follows:

"By section 178 of article 8, to entitle a person to vote he must have resided in the State at least two years, in the county one year and in the precinct or ward three months, immediately preceding the election; have paid his poll tax, and have been duly registered as an elector. By section 182, idiots, insane persons and those convicted of certain crimes are disqualified. Subject to the foregoing, by section 180, before 1903 the following male citizens of the State, who are citizens of the United States, were entitle to register, viz: First. All who had served honorably in the enumerated wars of the United States, including those on either side of the 'war between the States.' Second. All lawful descendants of persons who served honorably in the enumerated wars or in the war of the Revolution. Third. 'All persons who are of good character and who understand the duties and obligations of citizenship under a republican form of government.' By section 181 after January 1, 1903, only the following persons are entitled to register: First. Those who can read and write any article of the Constitution of the United States in the English language, and who either are physically unable to work or have been regularly engaged in some lawful business for the greater part of the last twelve months, and those who are unable to read and write solely because physically disabled. Second. Owners or husbands of owners of forty acres of land in the State, upon which they reside, and owners or husbands of owners of real or personal estate in the State assessed for taxation at three hundred dollars or more, if the taxes have been paid, unless under contest. By section 183, only persons qualified as electors can take part in any method of party action. By section 184, persons not registered are disqualified from voting. By section 185, an elector whose vote is challenged shall be required to swear that the matter of the challenge is untrue before his vote shall be received. By section 186, the legislature is to provide for registration after January 1, 1903, the qualifications and oath of the registrars are prescribed, the duties of the registrars before that date are laid down, and an appeal is given to the county court and Supreme Court if registration is denied. There are further executive details in section 187, together with the above-mentioned continuance of the effect of registration before January 1, 1903. By section 188, after the last-mentioned date applicants for registration may be examined under oath as to where they have lived for the last five years, the names by which they have been known, and the names of their employers."

It is apparent that paragraph 3 of section 180, permitting the registration of electors before 1903, of "all persons who are of good character and who understand the duties and obligations of citizenship under a republican form of government," opened a wide door to the exercise of discretionary power by the registrars. It is charged that this section, in connection with section 181, permitting the registration of certain persons after January, 1903, was intended to be so carried into operation and effect that the negroes of Alabama should be excluded from the elective fran-

chise, and to permit the white men to register before January 1, 1903, and thus become electors, compelling the colored men to wait until after January 1, 1903, and then to apply under conditions which were especially framed and would have the effect to exclude the colored man from voting. It is charged that the registrars well knew the scheme and purpose set forth in the complaint to work the disfranchisement of negro voters and to qualify the white voters to exercise the elective franchise, and it is charged that the defendants were appointed by the State under sections of the State constitution adopted for the purpose of denying the colored man the right to vote and under which the defendants are undertaking to carry out the scheme and were so acting when they denied the right of the plaintiff to register, thus depriving him of the right guaranteed to him by the first section of the Fifteenth Amendment to the Constitution of the United States. A consideration of the allegations of this complaint, to which the demurrer was sustained, makes apparent that the Federal right for which the plaintiff sought protection and the recovery of damages was that secured by the amendment to the Federal Constitution, which prohibits a State from denying to the citizen the right of suffrage because of race, color or previous condition of servitude. But in the present case the State court has not sustained the right of the State to thus abridge the constitutional rights of the plaintiff. It has planted its decision upon a ground independent of the alleged State action seeking to nullify the force and effect of the constitutional amendments protecting the right of suffrage. The first ground of sustaining the demurrer is, in effect, that, conceding the allegations of the petition to be true, and the registrars to have been appointed and qualified under a constitution which has for its purpose to prevent negroes from voting and to exclude them from registration for that purpose, no damage has been suffered by the plaintiff, because no refusal to register by a board thus constituted in defiance of the Federal Constitution could have the effect to disqualify a legal voter, otherwise entitled to exercise the elective franchise. In such a decision no right, immunity or privilege, the creation of Federal authority, has been set up by the plaintiff in error and denied in such wise as to give this court the right to review the State court decision. This view renders it unnecessary to consider whether, where a proper case was made for the denial of the right of suffrage, it would be a defense for the election officers to say that they were acting in a judicial capacity where the denial of the right was solely because of the race, color or previous condition of servitude of the plaintiff. In the ground first stated we are of opinion that the State court decided the case for reasons independent of the Federal right claimed, and hence its action is not reviewable here.

In the case for a writ of mandamus the same attack was made upon the action of the State of Alabama in adopting and enforcing the provisions of the State constitution which it was charged were adopted for the purpose of

disfranchising the negroes and permitting white men only to exercise the elective franchise. In the mandamus case the decision of the State court was:

"The petition in this case is for a writ of mandamus to compel the board of registrars for Montgomery County to register the petitioner as an elector. It alleges that sections 180, 181, 183, 184, 185, 186, 187 and 188 of art. VIII of the constitution of 1901, fixing the qualification of electors and prescribing the mode of registration, are unconstitutional because violative of the Fourteenth and Fifteenth Amendments of the Constitution of the United States. The prayer is in substance that these sections of the constitution above enumerated be declared null and void and that an alternative writ of mandamus issue to the board of registrars commanding them to register as a qualified elector of the State of Alabama, upon the books provided therefor, the name of petitioner and to issue to him a certificate of the fact in disregard of said sections of the constitution, &c.

"As these sections of the constitution assailed created the board of registrars, fixed their tenure of office, defined and prescribed their duties, if they are stricken down on account of being unconstitutional, it is entirely clear that the board would have no existence and no duties to perform. So then taking the case as made by the petition, without deciding the constitutional question attempted to be raised or intimating anything as to the correctness of the contention on that question, there would be no board to perform the duty sought to be compelled by the writ and no duty imposed of which the petitioner can avail himself in this preceeding, to say nothing of his right to be registered.—Affirmed." (136 Ala. 228.)

We do not perceive how this decision involved the adjudication of a right claimed under the Federal Constitution against the appellant. It denies the relief by way of mandamus, admitting the allegations of the petition as to the illegal character of the registration authorized in pursuance of the Alabama constitution.

This is a ground adequate to sustain the decision and wholly independent of the rights set up by the plaintiff as secured to him by the the constitutional amendments for his protection.

The plaintiff in error relies upon two cases adjudicated in this court, *Wiley* v. *Sinkler*, (179 U. S. 58,) and *Swafford* v. *Templeton*, (185 U. S. 487.) In the former it was held that an action may be sustained in a court of the United States against election officers for refusing the plaintiff's vote for member of Congress. The allegations of the complaint are set forth in full in the statement of the case, and it appears that the board of managers were averred to be legally qualified to preside at the Federal election, and as such wrongfully refused the proffered vote of the plaintiff, a duly qualified elector, willfully and without legal excuse. It was held that the complaint was defective for not averring that the plaintiff was a duly registered voter. It appeared that the registration law had not been held unconstitutional, and it further appeared that if such was the fact

plaintiff was not in a position to impugn its constitutionality. In *Swafford* v. *Templeton*, it was held that the Circuit Court erred in dismissing for want of jurisdiction an action kindred to that sustained in *Wiley* v. *Sinkler*, wherein the plaintiff was denied the right to vote for member of Congress, which was held to have its foundation in the Constitution of the United States, with consequent jurisdiction in a Federal court to redress a wrongful denial of the right. Neither of these cases are in point in determining our right to review the action of the State court in the case now before us. It is apparent that the thing complained of, so far as it involves rights secured under the Federal Constitution, is the action of the State of Alabama in the adoption and enforcing of a constitution with the purpose of excluding from the exercise of the right of suffrage the negro voters of the State, in violation of the Fifteenth Amendment to the Constitution of the United States. The great difficulty of reaching the political action of a State through remedies afforded in the courts, State or Federal, was suggested by this court in *Giles* v. *Harris*, *supra*.

In reaching the conclusion that the present writs of error must be dismissed the court is not unmindful of the gravity of the statements of the complainant charging violation of a constitutional amendment which is a part of the supreme law of the land; but the right of this court to review the decisions of the highest court of a State has long been well settled, and is circumscribed by the rules established by law. We are of opinion that plaintiffs in error have not brought the cases within the statute giving to this court the right of review.

The writs of error in both cases will be dismissed.

Mr. Justice McKenna concurs in the result.

Mr. Justice Harlan dissents.

True copy.

Test:

Clerk Supreme Court, U. S.